Supreme Court, U.S.
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No. 96

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

JOSEPH WESLEY NEWTON,

Petitioner,

v.

SUPREME COURT OF GEORGIA
BOARD TO DETERMINE FITNESS OF BAR APPLICATION

Respondent.

For the Writ of Certiorari to
The Supreme Court of Georgia

Petition for Writ of Certiorari

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100 pp

QUESTIONS PRESENTED

The fundamental question raised in Nos. 1-5 below is whether petitioner, Joseph W. Newton, has been denied a license to practice law in Georgia in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

1. In determining moral fitness of an applicant to practice law, must the Board to Determine fitness of Bar Applicants (hereinafter referred to as the "Board") assess present moral character under the mandate of Schware v. Board of Bar Examiners of the State of New Mexico, 353 U. S. 232, 17 S. Ct. 752, 1 L.Ed.2d 796, 64 A.L.R. 2d 288 (1957) ("The board, remaining focused on pre-law school behavior, disagreed with the hearing officer and formally declined certification." In re: J.W.N., 266 Ga. 58 (463 SE2d 114) (1995) (Adv. Sheets, p58, App. 49)

2. If the applicant presents substantial evidence of good present moral character, must the Board then rebut applicant's showing of good present moral character? Does the Board's failure to make this rebuttal and show any rational basis for excluding the applicant violate the applicant's due process under the Fourteen Fourteenth. Amendment and thereby require admission to the Bar. ("The Board did not challenge his good moral character since 1990. They just refused to address it."

Applicant's Motion for Reconsideration in the Supreme Court of Georgia, In re I.W.N.[1] (App. 73))

3. What is the evidentiary standard to be used in a moral fitness examine by a State Bar Admissions committee. Should doubts as to moral fitness be resolved in favor of the applicant (who has spent large sums of money and years of hard work in law school qualifying for the bar examination) since the "State has ample means to discipline him for any future misconduct." Schware, infra at FN 20., at 248.

4. Is a settlement of a civil law suit sufficient evidence of satisfaction of a debt (when there is no showing otherwise) or can the Board go behind the terms of the settlement and impose their own provisions on the settlement when all parties to the settlement have agreed to the terms therein. "Has the applicant made restitution to those individuals harmed by his actions?" (Letter from Office of Bar Admissions denying certification of the applicant, Hewlett S. Askew, Director, October 14, 1994.)(App.41).

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[1] Twenty-seven witnesses testified supporting applicant's good character. Applicant also produced 27 affidavits supporting good character, for a total of 54 different witnesses verifying this present good moral character. The Board made no showing and produced no witnesses refuting applicant's showing of good, present moral character

5. In determining a bar applicant's present moral character and fitness to be an attorney, what value should be placed on isolated incidences of nonfeloneous and nonmoral turpitude minor criminal offenses?

6. Does 11 U.S.C. 525(a) apply to bar admission proceedings?

> "A government unit may not deny, revoke, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to discriminate with respect to such a grant against (one who has been) . . . a debtor under this title or a bankrupt debtor under the Bankruptcy Act . . . who . . has not paid a debt that is dischargeable the case under this title or that was discharged under the Bankruptcy Act."

LIST OF PARTIES INVOLVED

(a) Office of Bar Admissions, Supreme Court of Georgia;

(b) Board to Determine Fitness of Bar Applicants, Supreme Court of Georgia

(c) Joseph W. Newton

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The Supreme Court of Georgia

Petition for Writ of Certiorari

COMES NOW the petitioner and requests this honorable court to grant his petition for a writ of *certiorari* and respectfully shows the following:

CITATIONS OF OFFICIAL AND UNOFFICIAL RULINGS AND OPINIONS

(1) Finding of Facts and Recommendations by the Hearing Officer,

(2) In re Application of Joseph W. Newton, Bar Admission Docket No. 126.

(3) Letter of denial by the Board to Determine Fitness of Bar Applicants.

(4) In re: J.W.N., 266 Ga. 58 (463 SE2d 114) (Adv, 58) (1995).

STATEMENT OF JURISDICTION

The Georgia Supreme Court denied petitioner's certification to practice law on November 3, 1995. Petition for Second Motion for Reconsideration was denied on December 5, 1995. Applicant has timely filed this writ within the 90 day period prescribed under Rule 13(3) of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

STATEMENT OF CASE - FACTS

J.W.N. within the time provided by law filed his Motion for Reconsideration to the Opinion in the case In Re: J.W.N., infra.. The first response to applicant's appeal to the Supreme Court of Georgia was the Court Order of September 11, 1995, and this was followed by the Opinion of November 3, 1995. In both instances after the introductory sentences, is

the following: "After the board tentatively denied his application, a hearing officer recommended Certification based on his behavior since entering law school. The board, remaining focused on pre-law school behavior, disagreed with the hearing officer and formally declined certification." In re: J.W.N., Adv. Sheets, p.58, App. 50) The following was included in the letter of October 14, 1994, from the Office of Bar Admissions, signed by its Director, Mr. Hulett H. Askew; "Even before considering whether your conduct since 1990 demonstrates rehabilitation, the Board believes two factors must be considered: (1) has the Applicant acknowledged his mistakes and taken responsibility for past conduct; and (2) has the applicant made restitution to those individuals harmed by his actions. The board finds that you have failed to present clear and convincing evidence on both counts. Therefore, it is not necessary to consider your conduct since 1990." (Letter of Denial from Office of Bar Admissions, App.43)

It is disturbing to note that the Georgia Supreme Court, as well as the board, chose to dwell on pre-1990 and fail to address 1990 to the present.

The hearing officer, Mr. M. T. Simmons, held a two day hearing. During this time, he heard 29 witnesses testify on behalf of the applicant. No one, the board nor the Court, has gone on record as to who these people were or what they said..

Applicant thinks it well to address who the people were as he contends Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 17 S.Ct. 752, 1 L.Ed.2d 796, 64 A.L.R. 2d 288 requires it. Neither the Board of Bar Examiners nor the Supreme Court of Georgia considered present moral character in light of the evidence presented by applicant as required by Schware, supra, and thus applicant's due process rights were violated as required under Schware, at, 245.

REASONS FOR GRANTING WRIT OF CERTIORARI

He comes highly recommended by people from all walks of life. He is a dedicated Christian, who admittedly has in the past acted in a manner he is not proud of. Nevertheless, Schware, infra., at 246, requires that his moral character be judged at the present time and not upon past behavior. [J.W.N.] Current good character is attested to by three judges in two different states. (Motion for Reconsideration, App. 75) Senior Superior Court Presiding Judge Ralph Hicks, Judge Robert Cochran, and Judge Gilbert McCrowey of Rock Hill, South Carolina. (Motion for Reconsideration, App. 75) Two district attorneys recommended [J.W.N.]. Assistant Chief District Attorney Fred Larsen, who drove all the way to Atlanta from Dublin, Georgia to testify on his behalf (a distance of over 100 miles) and Assistant District Attorney David Gafnea (who serves in the Blue Ridge Judicial Circuit). (Motion for Reconsideration, App 75) Federal Police Officer James Atwood, (Motion for

Reconsideration, App. 75) Chief Mike Thomas of the Donaldsonville Police Force, (Motion for Reconsideration, App. 75) and former Lilburn Police Detective Mike Puglise, (Motion for Reconsideration, App. 75) all testified that [J.W.N.] had superb character and unselfish dedication to help his fellow man. Former Georgia State Senator Joe Hammil was especially enthusiastic about [J.W.N.] good character. (Motion for Reconsideration, App. 75)

Law Professors Lawrence Eastburn, Barry Broome, Wayne Rasmussen, and Omni Walker, all testified that he was one of, if not, the best law student they had ever taught. (Motion for Reconsideration, App. 76) [J.W.N.] Good character was verified by Atlanta Law School Dean Harvey Muskowitz, where [J.W.N.] recently received his LL.M. (Motion for Reconsideration, Affidavit of Dean Muskowitz, App. 76) Dr. David B. Meltz, Dean of the John Marshall School of Law, said that "[J.W.N.] was president of the Student Bar Association . . . and . . .was instrumental in the research and adoption of the Student Honor Code." (Motion for Reconsideration, Affidavit of Dean Meltz, App. 76) Doug Price, Administrative Assistant at John Marshall Law School, said that "[J.W.N.] is the only person, to my knowledge, who has ever graduated John Marshall Law School with a 3.0 grade average." (Transcript of Hearing Officer, App. 76)

The Reverend J. Jeffrey Williams said that "[J.W.N.] organized an inexpensive bar review program for those students who could not afford the

commercial course" and also knows [J.W.N.] as a Christian in his role as a pastor. (Transcript of Hearing Officer, App. 76) Law student Dell Jackson and practicing attorney Teri Lee both heartily endorse his [J.W.N.] good character and moral fitness. (Transcript of Hearing Officer, App. 77)

Dr. Ernest Fitzgerald, former Bishop of the United Methodist Church in Atlanta, affirmed [J.W.N.] membership at Centenary Methodist Church from 1966 until 1982 and his service as an assistant Boy Scout master. (Motion for Reconsideration, Affidavit of Dr. Fitzgerald, App. 76) Attorney Tom Griffin of Kinston, North Carolina, wrote that "During 1976-77, [J.W.N.] was a member of Queen Street Methodist Church and was a teacher in the Sunday School for approximately a year. He was also a member of the Board of Trustees of the Church and an assistant Boy Scout leader...and recommends him as a good church member, a civic minded person and a person of good character and reputation." (Motion for Reconsideration, Affidavit, App. 77)

Dr. W. Frank Harrington, Pastor of Peachtree Presbyterian Church, the largest Presbyterian Church in America, took time to comment on his [J.W.N.] character:

> "[J.W.N.] has been a member...for approximately three and one-half years...[J.W.N.] has taught in several areas of our Sunday School... [J.W.N.] has been extremely active in the Habitat for Humanity project...(H)e has worked with the church in numerous programs, including the Christmas in April project, which repairs houses for the needy. [J.W.N.] has been a loyal church member and I am not aware of any reason why the Board should not certify [J.W.N.] moral

fitness application." (Motion for Reconsideration, Affidavit of Dr. Harrington, App. 77)

Dr. Jeff White, Associate Minister of Peachtree Presbyterian Church, says that "I believe he is a man of great integrity, unselfish devotion to his fellow man, a tireless Christian worker in the Presbyterian Church, and a valuable asset to our programs." Tonis Lansing, Director of Community Ministries at Peachtree Presbyterian Church, which has a nationwide ministry, considers [J.W.N.] "an extremely valuable asset to our church and its missions." (Motion for Reconsideration, Affidavit of Dr. White, App. 77) Rodney Petty, a Peachtree Presbyterian Church member, says that "I have seen [J.W.N.] almost every Sunday since first meeting him in February 1990...He gives freely and generously of his time and talent to many projects at our church." (Motion for Reconsideration, Affidavit of Mr. Petty, App. 78)

[J.W.N.] has spent his own time and money to help Habitat for Humanity in metro Atlanta over the past three years. He is now in the process of having all of his electrical and mechanical trade licenses reinstated in North Carolina so that he can, by reciprocity, transfer the licenses to Georgia in order to further enhance his contributions to Habitat for Humanity. This has been a very expensive and time consuming process, involving preparing for and taking two extremely difficult state trade exams with further examination by the State of Georgia before being licensed here. [J.W.N.] has spent over a month preparing for the electrical and plumbing exams; he has traveled almost

2,000 miles to and from Atlanta, Winston-Salem, and Raleigh to attend trade license preparation courses and take the exam; and he has spent hundreds of dollars for the courses, exam fees, and travel expenses. He is now and always has been firmly committed to aiding Habitat for Humanity in every way possible. These licenses will be extremely valuable to Habitat for Humanity and Peachtree Presbyterian Church's Christmas in April Program in helping these two programs improve and build houses for underprivileged people.

> "If [J.W.N.] were able to be licensed in Georgia in the plumbing, electrical, heating, and air-conditioning trades, he would be an enormous benefit to our outreach programs..." (Tonis Lansing, Affidavit (Motion for Reconsideration, Affidavit of Ms. Lansing, App. 78)

> "[J.W.N.] has volunteered countless hours to Habitat for Humanity in Atlanta, performed minor repairs within the appliance, plumbing, electrical, and heating and air-conditioning trades for people in our (Sunday School) class who otherwise would not have the financial resources to obtain these repairs. He is one of the very few people in our church with this mechanical aptitude. For a man who has very little time, he has used it wisely and unselfishly." (Rodney Petty, Affidavit, (Motion for Reconsideration, Affidavit of Mr. Petty, App.79)

> "I am President of the Clayton County affiliate for Habitat for Humanity. In that capacity, [J.W.N.] called me and offered to try to establish a strong working relationship between the Clayton county affiliate and the Atlanta Habitat for Humanity affiliate." (Greg K. Hecht, Former Assistant District Attorney, current Staff Attorney, and Clayton County Habitat for Humanity President) (Motion for Reconsideration, Affidavit of Attorney Hecht, App. 79)

> "[J.W.N.] is a valuable asset to Habitat for Humanity in Atlanta. He can greatly enhance his value to us

> by becoming a licensed Georgia contractor in the plumbing, electrical and heating trades...I believe that [J.W.N.] has high and good moral character... He has consistently demonstrated this by his unselfish contribution to 'Habitat' over the past three years. He has contributed countless hours of his time and skill to numerous 'Habitat' projects." (Gilbert Nicholson, Habitat for Humanity Carpenter and Construction Foreman). (Transcript of Hearing Officer, App. 79)

There were only three witnesses that testified for the board. None of these witnesses refuted any of the above nor did the board submit a single witness that testified that he did not have present good moral character such as qualifies him to sit for the bar. The board did not challenge his good moral character since 1990. They just refused to address it. (Letter of Denial by the Office of Bar Admissions, App. 43) In the absence of this, it is unrefuted that he is of good moral character and fits the accepted standard of "good character at the time of application is the appropriate test." Schware, infra. 245, and In re Cason, 249 Ga. 806, 809 (463 SE2d 114 (1995).

In addition to the above, there were 27 affidavits by individuals filed that attested to his rehabilitation and present moral character and fitness to practice law in Georgia.

Of these 27, there was, among others:

4 Pastors, including Dr. W. Frank Harrington, Pastor, Peachtree Presbyterian Church and Dr. Ernest Fitzgerald, former Bishop of the United Methodist Church

13 Attorneys at law, which includes 2 judges, 1 former Attorney General of North Carolina, and presently Secretary of State of North Carolina

2 Doctors

1 Dean of School of Law

1 Executive Secretary of the State Board of Examiners of Plumbing, Heating and Fire Sprinklers Contractors.

The Special Master, based upon the above, stated in his recommendation to the board, thusly: "J.W.N. has demonstrated unequivocally his fitness for admission to the Georgia State Bar." (Findings of Fact and Recommendation Of The Hearing Officer, App. 39) The Board chooses to ignore this finding and focus on pre-law school behavior. It makes no attempt to justify its reasons for the denial. Just a string of generalizations and unproven accusations.

The opinion of the Georgia Supreme Court In re: J.W.N., (App. 52) also stated: "In a request for information about applicant, the President of John Marshall Law School indicated that he would not recommend him for a position of trust."

At the hearing before the Hearing Officer, the board had John Marshall Law School President Fenster subpoenaed, he was there, they chose not to call him. The board had a chance to prove whether or not President Fenster would

recommend applicant for a position of trust, but their attorney chose not to do so. The burden was on the board to prove this charge after applicant proved his good, moral character, which he did. The board never entered any proof of this and it is unfait to premise a decision upon this baseless statement.

The truth of the matter is that President Fenster's remarks were confined to a preliminary investigation form in which he state that he had "no documented reason" for indicating that he would not recommend the Petitioner/Bar Applicant for membership in the Georgia Bar. (Inquiry Form Furnished By Office of Bar Admissions, App. 65) Subsequently, after President Fenster had time to investigate the matter, he furnished a detailed affidavit indicating his full and unqualified endorsement of the Petitioner/Bar Applicant for membership in the Georgia Bar. (Affidavit of President Fenster, App. 62-64)

In dealing with applicant's business practices, the Court said:

> "If certification were to be granted despite applicant's business practices, we must be reasonably convinced that he can avoid the temptation to act as he had previously acted; any doubt must be decided in favor of the public's protection" In re Lubonovic, 248 Ga. 243, 248 (282 SE2d 298 (1981).

In the Matter of Johnson, 144 GA 109 (259 SE2d 57 (1979) dealt with the readmittance to the practice of law of one who had been convicted of a felony involving moral turpitude, the Court had this to say:

> "In its report and in its brief the State Disciplinary Board has indicated that it considers that petitioner's burden is to show by clear and convincing proof that he is not likely to again commit a crime involving moral turpitude if reinstated." The board discounts petitioner's unmarked record since his conviction by pointing out that it is consistent with his record prior to conviction; i.e., his clean record prior to conviction did not prevent the crime for which he was convicted and therefore his record since conviction is not evidence that another crime will not be committed. Using this equation, no person could prove rehabilitation by a spotless record alone, no matter how long maintained since the disbarring conduct. Such a person could prove rehabilitation only by proof of his having rejected specific opportunities for criminal conduct. We find this standard to be too high for showing rehabilitation from a single offense. There can, of course, be no absolute guarantee that petitioner will never engage in misconduct again. But if such a guarantee were required for reinstatement none could qualify. All that we can require is a showing of rehabilitation and of present moral fitness.'. Resner v. State Bar of California, 63 Cal. Rptr. 740 (433 P2d 748), 755-756 (1967):

In answer to that portion of the opinion that says, "any doubt must be decided in favor of the public's protection," is an attempt by the board and the Court to protect the public from an act in the future. Schware at FN 20, p. 245 says, "It must be borne in mind that if petitioner otherwise qualifies for the practice of law and is admitted to the bar, the state has ample means to discipline him for any future misconduct." The board and the Court appear to be trying to discipline the applicant for something that they perceive might take place in the future. This they cannot do under Schware. It is also stated in Ex

Parte Garland, 4 Wall 333, 379, 18 L.Ed. 366, as cited in Schware, FN5, p. 238 that the practice of law is not a matter of the state's grace.

In the Matter of Hester, 253 Ga. 365, 320 SE2d 541 (1984) even though the petitioner has stated in his application for reinstatement that he had no assets, and had several large judgments against him, this did not disqualify him from being reinstated to the practice of law. If this Court will just please read the Johnson and Hester cases, applicant feels sure that this honorable court will grant his Writ of Certiorari and reverse the Georgia Supreme Court since In re J.W.N. conflicts with these cases as well as Schware, infra. Petitioner/Bar Applicant should be allowed to take the bar because his case is not as bad as either Johnson or Hester inasmuch as he was never prosecuted, charged with, nor convicted of a crime involving moral turpitude or felonious conduct or charged with violating a trust, stealing, misappropriation of funds or anything with a rational connection with applicant's fitness or capacity to practice law.

In Re Lubonovic, supra, dealt with a party that had raided the funds held in trust for mortgage companies. There is also not one ounce of evidence in this case that links applicant with this type of immoral breach of fiduciary duty.

There were simply no crimes connected with applicant in connection with his business. Unfair Trade Practices is a civil not a criminal matter and no amount of saying otherwise will make it so.

Justice Frankfurter summed the criteria for good character. "There must be those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility." Schware, at 247. The applicant has demonstrated his present moral fitness in each and every one of these categories. His truthfulness has prevailed over a grueling three year examination by the Board and this Court. He has been voted by his fellow students and faculty of his law school to be President of the Student Bar Association and Valedictorian by the faculty. He has been recommended by 36 plus members of the bench and bar in four different states. These people, along with other members of the community, which include his church, pastor, and the charities that he has worked faithfully for, swore under oath, gave affidavits, and letters that show him to be with a high sense of honor and of granite discretion. These judges, lawyers, and laymen would not make this effort on his behalf had he not been of the highest character. His handling of client funds, both as a real estate broker and a general contractor, where he has successfully maintained his fiduciary duties for nearly thirty years, has never been questioned. He has never been convicted of a felony nor accused of taking money or property of any kind. In short, he has never violated a trust. What else could any court want? This man has done everything that any human being could possibly do to show atonement for his errors. Applicant has faith that when looked at in the light of present behavior, the Court will

come to the conclusion that under Schware, he will be certified. It is difficult for applicant to understand how the Court can ignore this man's achievements in the last six years. It seems that this Court cannot stop focusing on the past and apply the standard as the United States Supreme Court dictated in Schware, that is present good moral character.

As to the judgments, by the North Carolina and South Carolina attorney generals he has never been given a trial on the merits in either case. Applicant hired what then appeared to be an outstanding member of the North Carolina State Bar to defend him against the unfair trade practice suit. [A civil suit, not a criminal suit.] As a result of this lawyer's malpractice, the case ended with a default judgment against the applicant and ultimately the attorney ended up in prison for malpractice with multiple felony convictions. How can this Court reason that because of the malpractice of his attorney, that the applicant is "unscrupulous." The unrefuted evidence before the Hearing Officer, from a well respected North Carolina attorney, shows that the default judgment was solely caused by attorney Jim Blackburn. This is what the North Carolina attorney, who was a live witness, said about these business activities and how the judgments came about.

Mr. Gilbert Chichester, the attorney licensed in the states of North Carolina and Virginia, when asked if he had cause to look into the case of the

State of North Carolina, et al. , Lacy H. Tornburg, Attorney General v. Joe Newton, Incorporated and Joe Newton, said:

ON DIRECT

Q. What did you find when you checked this case, as to the records concerning both the trial court and the appellate court? (App. 69)

A. I found that Mr. James Blackburn was an attorney that was retained to represent Mr. Newton and his company; that at the trial court level that the discovery that was submitted to them by way of interrogatories and requests for admissions were not responded to by the attorney for Mr. Newton, and that consequently, as a result of that, the State of North Carolina was able to obtain a default judgment in the matter; that from looking at the records, just on the face of the records themselves, that the discovery should have been responded to and could have been responded to; but it was not responded to. (App.69)

MS. ANDERSON (BOARD ATTORNEY) - CROSS

Q. Okay. Would you agree, Mr. Chichester, that it's not clear from the pleadings in that case whose fault it was that the discovery was not responded to, whether it was Mr. Blackburn or his client's refusal to assist Mr. Blackburn in putting the discovery together? (App. 72)

A. No, I probably wouldn't agree to that, because of what I now know about Mr. Blackburn and his conduct during that period of time; and also because there was no correspondence in the files indicating that Mr. Blackburn was seeking continuances, which you are entitled to under the North Carolina Rules, in order to get this done. (App. 72)

Ms. ANDERSON:

Okay. I don't have any further questions. Thank you. (Transcript of Hearing Officer, App. (App.72)

These were the judgments that forced J.W.N. into bankruptcy. 11 U.S.C. 525(a) provides, "a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to discriminate with respect to such a grant against (one who has been) . . . a debtor under this title or a bankrupt or debtor under the Bankruptcy Act...(who...has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act." This court, under 11 U.S.C. 525(a) cannot deny certification to take the Georgia bar due to failure to pay debts discharged by bankruptcy. "The court ordered him to pay civil penalties, canceled all contracts he made with customers since 1981, and ordered him to make restitution." In Re: J.W.N. (App. 51) ___

A business dispute with Sears in 1984 is used as an example of his unfit character. The record clearly and irrefutably shows that Sears owed him approximately $3,000 then and still owes him the money. Just who is it that the Court has declared unscrupulous. All the applicant did was hold Sears accountable for its just debts. When the name Sears enters this formula, magically, the applicant is deemed to be an unscrupulous businessman just by use of the Sears name. Incredible reasoning! Applicant has labored long and hard, cited North Carolina and South Carolina case law, to show to the Court that unfair business practice charges are civil in nature, not criminal, and the statute can be innocently violated. The statute holds one liable for even the

slightest innocent misrepresentation whether knowingly or not. Marshall v. Miller, 302 N.C. 539, 548 (276 SE2d 397) (1981) and McLeod v. C & L Corp., 280 S.C. 519, 525, (313 SE2d 334) (1984). There never was a trial on the merits involving the applicant. Blackburn just walked off and left the case. The Court has leaped to the conclusion that the applicant's conduct was knowingly fraudulent or misleading. (In re: J.W.N. App. 51) The evidence is just the opposite. The evidence clearly and irrefutably shows Jim Blackburn's malpractice resulted in these judgments being taken by default. (Motion for Reconsideration, App. 86-87, Transcript of Hearing Officer, App. 67-72) There is absolutely no evidence in the record to refute the applicants version of these facts. The North Carolina and South Carolina assistant attorney generals, Phil Leahman and Ken Moore, respectively, and personnel from the North Carolina Department of Consumer Affairs (Jane Grimes) were on the Board's witness list and were not called as witnesses. They could have been called to refute attorney Gilbert Chichester's testimony but the Office of Bar Admissions chose not to do so. This evidence overwhelmingly supports the applicant's version of these facts. Mr. Blackburn's felony convictions in the Superior Court of Wake County, North Carolina, the North Carolina State Bar affidavit showing his disbarment, the newspaper articles, testimony of Mr. Chichester, and the applicant himself are all unrefuted as to what the facts were. (Motion for Reconsideration, App. 89-91, Transcript of Hearing Officer, App. 67-72)

The Board has not produced one shred of evidence to the contrary yet the court jumped to a totally unfounded conclusion that "evidence of the applicant's unscrupulous business practices is persuasive." (In re: J.W.N. App. 51) How can the Court reach such a conclusion with no evidence produced by the board. The only evidence the board has is what applicant provided.

All these goings on by this attorney resulted in the attorney being charged with nearly a dozen felony counts, pleading guilty, and going to prison. The applicant, along with dozens of other victims, was left with the judgments. This same attorney advised the applicant in his South Carolina business dealings which terminated in bankruptcy court. All this information is well documented in the record with certified court records, newspaper articles, and affidavits from the North Carolina State Bar. (Motion for Reconsideration, App. 89-91, Transcript of Hearing Officer, App. 67-72) The applicant pleads with this Court to examine the testimony of North Carolina attorney Gilbert Chichester before the Hearing Officer. (Transcript of Hearing Officer p. 8-17, App. 68-73) Obviously the Hearing Officer thought Attorney Chichester, the North Carolina State Bar, and the Wake County, North Carolina district attorney who prosecuted Blackburn, were telling the truth or his decision would have been otherwise.

The Georgia Board never heard Mr. Chichester's testimony. They just jumped to the conclusion that the applicant was an "unfair" businessman and in

less than two hours, made a decision, whereas the Special Master took two days to make his decision. How can the Georgia Supreme Court support a perfunctory and cursory examination like this with no basis in fact? The applicant pleads with this Court to just look at the record. It is all laid out by Attorney Chichester. (NOTE: Attorney Chichester is not applicant's attorney, had never met the applicant, or even seen the applicant prior to the hearing. The record confirms these assertions.) (Transcript of Hearing Officer, App. 71)

The board remained focused upon pre-law school behavior, and in light of applicant's rehabilitation, fails to show that their accusations are rationally related to the practice of law. Failing to make this showing is a violation of substantive due process under the Fourteenth Amendment of the United States Constitution, and demands reversal under the Schware standard.

The board failed and refused to consider present, good, moral character, and focused instead upon pre-law school behavior. The board also failed to enter any evidence of and refused to determine whether applicant has been convicted of any felonies or crimes involving moral turpitude and failed to evaluate any accusations of past bad character in terms of whether such was rationally related to the practice of law. Finally, the board failed to show that applicant had ever violated any fiduciary duty, or trust. In light of this, the board ignored the requirements set out in Schware, and the board's denial of

applicant's application to take the bar exam based upon lack of fitness to do so should be reversed.

CONSTITUTIONAL ISSUES RAISED

The substantive due process violations were raised before the Georgia Supreme Court in Petitioner's brief known as "Applicant's Objection to a Procedure That Violates His Constitutional Rights to Due Process of Law and The Equal Protection of the Laws." (Applicant's Objection to a Procedure That Violates His Constitutional Rights to Due Process of Law and the Equal Protection of the Laws, App. 93)

Substantive due process violations were raised before the Georgia Supreme Court again in the Motion for Stay for Remittitur on October 3, 1995 on page 1 in the case known as In re J.W.N., 266 Ga. 58 (463 SE2d 114) (1995). (App. 49)

Substantive due process was raised again before the Georgia Supreme Court in both Motion for Reconsiderations. (App.74, 99)

By rendering the opinion known as In re J.W.N., the Georgia Supreme Court has placed itself in conflict with Schware, all Geo27rgia bar admissions cases and virtually every bar admissions decision, in every state, and in the District of Columbia. By the Court's failure to examine

present moral character as required by Schware, it has totally ignored the substantive due process standards and leaves itself with no rational basis for its opinion. This opinion amounts to invidious discrimination. Schware and virtually every other case involving bar admissions require a thorough examination of present moral character. This examination is conducted through a balancing test of present verses past moral character and a fair evidentiary standard with the applicant being given the benefit of a reasonable doubt. Isolated misdemeanor, nonfelonous convictions of nonmoral turpitude offenses are virtually ignored. Schware also requires the State Bar Of Georgia to take some responsibility for the remote risks that an applicant will violate his ethics as a lawyer after this grueling process. Schware, FN 20, at 248.

11 U.S.C. 1125 (a) was raised in the second motion for reconsideration, at page 15 therein and the issues involved in settlement of the judgments were raised on pages 15-16 therein. (Second Motion for Reconsideration, App. 99). (NOTE: Only the part of the second Motion for Reconsideration dealing with bankruptcy and these debts is furnished in the Appendix. This motion dealt extensively with federal issues and is deleted in the interest of brevity. Petitioner/Bar Applicant will gladly furnish it in its entireity if necessary.)

TABLE OF AUTHORITIES

(1) U. S. Constitution

Article 4

5th Amendment (Due Process)

14th Amendment, Substantive Due Process

(2) U. S. Laws

11 U.S.C. 525 (a)

(3) U. S. Cases

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 17 S.Ct. 752, 1 L. Ed.2d 796, 64 A.L.R. 2d 288 (1957)

Konigsberg v. State Bar of California, 366 U.S. 36 (1961)

In re Ruffalo, 390 U.S. 544, 551 (1968)

Sandstrom v. Montana, 442 U.S. 510 (1979)

County Court of Ulster Co. v. Allen, 442 U.S. 140 (1979)

Francis v. Franklin, 471 U.S. 307 (1985)

Michaelson v. U.S., 335 U.S. 469, 475 (1948)

Ex Parte Garland, 4 Wall 333, 279, 18 L.Ed. 366, Schware, infra. FN 5, at 238

(4) California Cases

Resner v. State Bar of California, 63 Cal. Rptr. 740, 433 P2d 748 (1967)

(5) Georgia Cases

In re Beasley, 243 Ga. 134 (252 SE2d 615) (1979)

In re Cason, 249 Ga. 806 (294 Se2d 520) (1982)

In re J.W.N., 266 GA. 58 (463 SE2d 114) (1995)

In re Lubonovic, 248 Ga. 243 (282 SE2d 298) (1981)

In the Matter of Hester, 253 Ga. 365 (320 SE2d 541) (1984)

In the Matter of Johnson, 144 Ga. 109 (259 SE2d 57) (1979)

Sokolic v. State, 228 Ga. 788 (1972)

Strickland v. Willingham, 49 Ga.App. 355, 356

(5) Illinois

In re Loss, 119 Ill.2d 186 518 N.E2d 981 (1987)

(6) North Carolina Cases

Marshall v. Miller, 302 N.C. 539, 548 (276 S.E.2d 397) (1981)

(7) South Carolina Cases

McLeod v. C & L Corp., 280 S.C. 519, 525 (313 SE2d 334) (1984)

Black's Law Dictionary, Revised Fourth Edition

(8) District of Columbia Court of Appeals

In re Manville, 538 A.2d 1128 (D.C.App, 1988)

(9) Other Sources

(K. Allen and J. Braun, "Admission to the Bar--Character and Fitness Considerations," Georgia State Bar Journal, Vol. 22, p. 90 (Nov. 1985))

The Supreme Court of Georgia's Rules Governing Admission to the Practice of Law, 252 Ga. A-52

"Admission to the Bar: A Constitutional Analysis," 34 Vanderbilt L. Rev. 655, 668 (1980)

State Bar of Georgia Rule 4-221(e)(2)

Collier Pamphlet Edition, Bankruptcy, Part 1, by Lasa S. Herzog and Lawrence P. King, Comments, 1990/1991 L.Edition, page 409.

Advisory Committee Note, Collier Pamphlet Edition, Bankruptcy Rules, Part 2, Rule 6007, at 159

Character and Fitness--The Rehabilitation Factor, 52 The Bar Examiner 11 (1983)

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September 1, 1993

Mr. M. T. Simmons, Jr.
Simmons, Warren & Szczecko
P. O. Box 340
Decatur, Georgia 30031-0340

Re: Application of Joseph Wesley Newton
Bar Admissions Docket No. 126

Dear Mr. Simmons:

Thank you for giving us until September 13, 1993 to file the brief and proposed findings of fact. As you recall, two matters came up in the hearing that we agreed could be taken up at a later date. The first one was dealing with the South Carolina driver's license.

Enclosed herewith is Exhibit "A", page 105 of the hearing transcript in which Mr. Newton was questioned about speeding tickets on August 15, 1985, January 17, 1986, and May 15, 1986. The State then asked the question if he got the three speeding tickets on his North Carolina driver's license after he had applied and obtained a South Carolina driver's license. His answer was, "I think so." His answer was wrong and the State's question was totally wrong insofar as stating or inferring that he had driver's licenses from both States at these times.

Enclosed is a certified copy of the South Carolina Department of Highway & Public Transportation's record showing two things:

1. That the South Carolina driver's license was issued on July 9, 1986, which was long after the above charges on the North Carolina driver's license. Therefore, he was not driving with a North Carolina and South Carolina driver's license at the same time. The record also shows that the South Carolina license was returned from Georgia on January 29, 1992. The "GA" written in ink on the certified copy was there when it came into my office from the South Carolina Highway Department. See Exhibits "B" and "C" attached hereto and made a part hereof.

The Georgia report shows that he was issued his Georgia driver's license on December 18, 1991. The South Carolina report showing that they received his South Carolina license from Georgia on January 29, 1992 would fit bureaucratic time of transferring the surrendered South Carolina license from Georgia to South Carolina.

As you may recall, at the time of the hearing, we stated that Judge Frederick G. McCrowey of the Magistrate Court of York County, South Carolina, had sent us an Affidavit dealing with the charge that Mr. Newton had assaulted a woman in that County. The purpose of this Affidavit is to show that this was absolutely a false charge and that, in the Judge's opinion, Mr. Newton is an honest businessman and of good character. We did not have the

Affidavit at the time of the hearing although the Judge told us he would prepare and mail one to us we never did receive it. Judge McCrowey stated to us that he had prepared and mailed one to Mr. Newton to be used in the hearing in ample time for it to arrive before July 6, 1993. Enclosed is the Affidavit from Judge McCrowey in which he certified that he mailed an Affidavit, like the one enclosed herewith, in plenty of time for it to arrive in Georgia for the July 6, 1993 hearing.

We do have the Affidavit now that he sent to us originally and we respectfully ask the Court to allow it to be filed and used. It deals with a very crucial charge against Mr. Newton. The above is attached hereto marked Exhibits "D" and "E" and made a part hereof.

We are also enclosing the following items that we promised to send to the Court. They will be marked as Exhibits "F", "G", "H", "I" and "J" as well as copies of letters to the Attorney Generals of North Carolina and South Carolina, wherein these documents have been sent to them, as follows:

Exhibit "F" - Exclusive listing contract for North Carolina property;

Exhibit "G" - Dismissal of Civil Action No. 1-93-CV-1108, U. S. District Court, Northern District of Georgia, Joseph W. Newton, et al., Plaintiff vs. Michael F. Easley, ex rel., Attorney General, State of North Carolina, Defendant and T. Travis Metlock, ex rel., Attorney General, State of South Carolina, Defendant;

Exhibit "H" - A Motion for Voluntary Dismissal, Civil Action No. 93-CVS-03555 in the Superior Court of Wake County, North Carolina, being Joseph W. Newton, et al, Plaintiff vs. Michael F. Easley, ex rel., Attorney General, State of North Carolina, Defendant;

Exhibit "I" - Notice of Voluntary Dismissal of Civil Action No. 93-CVS-03555 listed above;

Exhibit "J" - Signed Memorandum of Agreement between Joseph W. Newton, Applicant in this hearing before this Court, Michael F. Easley, Attorney General, State of North Carolina by Phillip A. Lehman, Assistant Attorney General of North Carolina and T. Travis Metlock, Attorney General, State of South Carolina, by William K. Moore, Deputy Attorney General of South Carolina. This Agreement deals with the Attorney Generals of the respective States and Joseph W. Newton agreeing to dismiss any pending legal actions that each may have against the other pending at the time of the signing of this release by all parties.

Also enclosed is a copy of the letters to the Attorney Generals of North Carolina and South Carolina, forwarding to them executed copies of the Agreement together with the real estate copy listing referred to herein. Upon receipt of these signed documents, the two States will dismiss any cases against Mr. Newton. He has already dismissed any pending cases against them which were filed by him.

Kind regards.

Yours very truly,
/s/
GEORGE T. SMITH

GTS: dw
Enclosures

2.

IN THE SUPREME COURT OF GEORGIA

BOARD TO DETERMINE FITNESS OF BAR APPLICANTS

IN RE: APPLICATION OF JOSEPH W. NEWTON	*	BAR ADMISSION DOCKET NO. 126

FINDINGS OF FACT AND RECOMMENDATION TO THE BOARD TO DETERMINE FITNESS OF BAR APPLICANT

The Board to Determine Fitness of Bar Applicants has tentatively denied Petitioner's Application for Certification of fitness to practice law. Pursuant to Part A, Section 8 of the Rules Governing Admission to the

Practice of Law, the undersigned was appointed as Hearing Officer and a Hearing was held on July 6-7, 1993. the Board was represented by Julia B. Anderson. The Petitioner was represented by George T. Smith. Based upon the evidence presented at the hearing, the Hearing Officer makes the following findings of fact and recommendations to the Board.

FINDINGS OF FACT

1.

During the 1980's, Petitioner was engaged in the business of plumbing, electrical and other household repair work. Petitioner did business in both North and South Carolina. The Better Business Bureau, during this period, received numerous complaints about the manner in which Petitioner conducted his business.

2.

The North Carolina Attorney General filed suit against Petitioner in 1985 for unfair and deceptive trade practices. A temporary restraining order was issued against Petitioner on April 1, 1985, and Petitioner was found in contempt of that order on May 22, 1985. On March 30, 1987, a final judgment was entered in the case and Petitioner was ordered to pay $25,000.00 in civil penalties and $10,498.95 in attorney's fees. The court also canceled all contracts Petitioner had entered into since March 29,

1981, and ordered him to refund all monies paid pursuant to those contracts.

3.

Petitioner has never satisfied the judgment obtained against him by the North Carolina Attorney General or made restitution to his customers.

4.

The South Carolina Attorney General filed suit against Petitioner in December, 1989, for violation of the South Carolina Unfair Trade Practices Act. Less than one month later, Petitioner filed for bankruptcy. On March 20, 1990, the South Carolina court entered a Final Order and Permanent Injunction, which was consented to by Petitioner and the South Carolina Attorney General. Petitioner agreed to $30,000.00 in civil penalties, which would be paid through the bankruptcy estate. The order also provided that consumers should file their claims in bankruptcy court. The Consent Judgment included a finding that Petitioner had willfully violated the South Carolina Unfair Trade Practices Act. Petitioner was enjoined from certain business activity in the State of South Carolina.

5.

No money was ever paid to anyone out of Petitioner's bankruptcy estate; however, it appears that certain real estate in the bankruptcy estate has never been disposed of.

6.

Petitioner has been found guilty of two misdemeanor charges (trespassing in 1972 and assault in 1986). His driver's license was also revoked in 1965 for reckless driving.

7.

In 1981 a prayer for judgment was entered on a charge of harassing telephone calls and a plea of nolo contenders was entered in 1989 to a charge of threatening telephone calls (which was or is being reviewed on Habeas Corpus corpus).

8.

Petitioner was expelled from Wake Forest Law School in 1969. Petitioner was expelled from York Technical College in 1989.

9.

Petitioner moved to Georgia in 1990 and enrolled in John Marshall Law School. He graduated first in his class in June of 1992. He was president of the Student Bar Association. He as instrumental in activities which resulted in improvements of the law school. Petitioner has been active in his church and has volunteered his time and skills to Habitat for

Humanity. A number of individuals testified to Petitioner's good character and moral fitness.

10.

Petitioner, since graduating from John Marshall Law School, has continued his study of the law; and, he appears to be committed to pursuing a career in the law.

11.

Petitioner's conduct and character since entering law school in 1990 meet the standard for certification of fitness to practice law.

DISCUSSION

The burden is on Petitioner to show that he possesses the requisite character and moral fitness to be certified as fit to practice law. In re Beasley, 243 Ga. 134, 136 (1979). The applicable standard of proof in bar admissions cases should be "clear and convincing," rather than "preponderance of the evidence," since if there is any doubt about an applicant's qualification, that doubt must be decided in favor of the public. In re Cason, 249 Ga. 806, 809 (1982). See also, In re Loss, 119 Ill. 2d 186, 518 N.E.2d 981 (Ill. 1987).

Petitioner has been candid as to his conduct prior to admission to law school.

Charges and/or convictions of criminal activity raise a concern. However, Petitioner was not convicted of a felony and, at the time of his application, was not on probation or serving a sentence. The question of whether Petitioner has been rehabilitated must be considered.

Petitioner's business obligations discharged in bankruptcy also raise a concern. However, the policy of a fresh start for a debtor, after bankruptcy, overrides this concern of the Hearing Officer.

Petitioner entered law school in 1990. The record, at that time, did not support rehabilitation; and, it is difficult to understand why Petitioner was allowed, at that time, to enter law school. That matter, of course, is not before me.

Testimony as to Petitioner's conduct and character since entering law school is highly favorable. No witness testified as to any misconduct of any type after Petitioner entered law school.

Witnesses as to Petitioner's conduct and character were impressive. Witnesses were not, for the most part, familiar with Petitioner prior to his entry into law school; however, I cannot disregard their testimony on account of their unfamiliarity with Petitioner prior to his entry into law school.

Based on the testimony in this case, and documents introduced, the Hearing Officer finds evidence of rehabilitation that meets the required

standard and that Petitioner at this time possesses the necessary character and moral fitness required to qualify for admission to the State Bar of Georgia.

RECOMMENDATION

The Hearing Officer recommends that Petitioner's application for certification of fitness to practice law be granted.

SIMMONS, WARREN & SZCAECKO
315 W. Ponce de Leon Avenue
Suite 850
Decatur, Georgia 30030
(404) 378-1711

/s/_____
M. T. Simmons, Jr.
Hearing Officer

3.

Supreme Court of Georgia
OFFICE OF BAR ADMISSIONS
P. O. Box 38466
Atlanta, Georgia

October 14, 1994

Joseph Wesley Newton
659 Peachtree Street, # 216
Atlanta, Georgia 30308

Dear Mr. Newton:

On November 6, 1992, the Board to Determine Fitness of Bar Applicants ("Board") tentatively denied your application for certification of fitness to practice law. Pursuant to Part A, Section 8(a) of the Rules Governing Admission to the Practice of Law ("Rules"), you requested and were provided a hearing before a Hearing Officer appointed by the Supreme Court. The hearing was held on July 6 and 7, 1993. On April 1, 1994, the Hearing Officer entered Findings of Fact and Recommendations to the Board to Determine Fitness of Bar Applicants. Pursuant to Part A, Section

8(c) of the Rules, the findings of the Hearing Officer are not binding on the Board.

The Board, pursuant to Part A, Section 7 of the Rules, then held an informal conference with you on June 7, 1994. Based upon its review of the transcript and all evidence introduced at the Hearing, as well as your conference with the Board, the Board finds that the evidence does not support a finding that you possess the requisite character and moral fitness necessary to qualify for admission to the practice of law.

The Board finds that you have engaged in a continuous course of illegal, unethical and immoral conduct throughout your adult life including unfair and unethical business practices, criminal conduct, and expulsion from law school in 1969 and technical school in 1989. This pattern of conduct continued up until just months prior to your moving to Georgia and enrolling in law school. You have consistently refused to acknowledge responsibility for past conduct, "[I]rresponsible conduct and unethical or questionable business practices have been held to constitute a proper basis for denial of admission to the bar." In re Lubonovic, 248 Ga. 243, 245 (1981).

Additionally, you have not made any effort to satisfy the judgments entered against you in North Carolina and South Carolina or to make restitution to the customers who were harmed by your conduct. Your failure to do so shows not only your refusal to acknowledge past misconduct but also your lack of respect for the law, based on the fact that you have failed to pay a valid judgment entered against you by a court of law. the evidence suggests that only after you realized that the judgments entered against you posed a barrier to admission to the Georgia bar did you commence efforts to negotiate a settlement to satisfy those judgments. Any effort by you at this time to make such payments would be suspect since they would likely be made solely for the purpose of obtaining a license to practice law.

In cases such as this, involving questions of prior bad conduct, the applicant must prove full and complete rehabilitation by clear and convincing evidence. In re Cason, 149 Ga. 806 (1982). The Board finds that you have failed to meet this burden of proof. Even before considering whether your conduct since 1990 demonstrates rehabilitation, the board believes two factors must be considered: 1) has the applicant acknowledged his mistakes and taken responsibility for past conduct; and 2) has the applicant made restitution to those individuals harmed by his actions. The Board finds that you have failed to present clear and

convincing evidence on both counts. Therefore, it is not necessary to consider your conduct since 1990. Moreover, the Board finds that your testimony regarding past conduct raises questions about your current character and fitness.

Based upon the foregoing, the Board to Determine Fitness of Bar Applicants has determined that your application for certification of fitness to practice law is denied. The Board's decision with respect to your application is final. However, you are advised that under the provisions of Part A, Section 9, Rules Governing Admission to the Practice of Law, you may appeal the Board's decision to the Supreme Court of Georgia. If you decide to do so, you must file a written notice of appeal with the Office of Bar Admissions and with the Clerk of the Supreme Court within thirty (30) days of receipt of this letter. You must also send a copy of your notice of appeal to the Attorney General. The Clerk will docket the appeal and notify you of the date of docketing.

Thereafter, you will have twenty (20) days in which to file an original and seven copies of your written argument in the Supreme Court. You must also serve a copy of your brief on the Office of Bar Admissions and the Attorney General.

Sincerely,

/s/ Hulett H. Askew
Office of Bar Admissions

4.

In the Supreme Court of Georgia
Decided: September 11, 1995

IN RE: JOSEPH WESLEY NEWTON

(Admissions Docket No. 126)

PER CURIAM.

Joseph Wesley Newton applied to the Board to Determine Fitness of Bar Applicants for certification of fitness to practice law. After the Board tentatively denied his application, a hearing officer recommended certification based on his behavior since entering law school. The Board, remaining focused on pre-law-school behavior, disagreed with the hearing officer and formally declined certification. Newton appeals. Because we find the Board's reasoning persuasive, we affirm.

The evidence indicates a long history of questionable behavior. In 1965, Newton's driver's license was revoked after he pled guilty to reckless driving. In 1969, he was expelled from Wake Forest Law School for lack of candor. He pled guilty to disorderly conduct in the early 1970's, and he was convicted of harassing phone calls in 1981. Five years later, he was found guilty of assault and convicted of driving while under the influence. In 1989, he was expelled from York Technical College for altercations with other students. In that same year, he pled guilty of a charge of threatening phone calls.[2]

Evidence of Newton's unscrupulous business practices is pervasive. He worked in plumbing and household appliance repair, and he did repair work as an independent contractor for Sears Robuck & Company. In 1984, Sears severed the relationship and later obtained a temporary restraining order to stop him from using a telephone number that Sears' customers used to request repairs. In 1985, after a significant number of consumer complaints, the North Carolina Attorney General filed suit against Newton for unfair and deceptive trade practices. The court ordered him to pay civil penalties, canceled all contracts he made with customers since 1981, and ordered him to make restitution.

---

[2] During the application process, Newton disclosed that numerous other criminal charges had been brought against him over a span of twenty years. They include: kidnapping, sexual assault, assault on a female, rape, attempted rape, and first degree criminal sexual conduct; public drunkenness and violation of open container laws; trespass; interfering with a police officer; unlawful use of a telephone; and civil disturbance.

In 1987, after his North Carolina plumbing license and driver's license were revoked, Newton moved to South Carolina. Two years later, the South Carolina Attorney General filed suit against him for unfair trade practices. That suit led to an order imposing civil penalties and enjoining him from any involvement in his trades. Soon after that judgment, Newton filed bankruptcy.

In 1990, Newton moved to Georgia and enrolled in the John Marshall Law School. He became involved in church activities and volunteered with Habitat for Humanity. He was president of the Student Bar Association and graduated first in his class. In 1992, he applied for certification of fitness to practice law. In a request for information about Newton, the President of John Marshall Law School indicated that he would not recommend the applicant for a position of trust.

After reviewing the hearing officer's report and conducting its own interview with the applicant, the board declined to certify Newton. We agree that he should be denied certification.

Where an applicant for admission to the bar has a criminal record, he must prove full and complete rehabilitation by clear and convincing evidence. In re Cason, 249 Ga. 806 (294 SE2d 520) (1982). Moreover, unethical or questionable business practices constitute a proper basis for denial of admission to the bar. In re Lubonovic, 248 Ga. 243 (282 SE2d 298) (1981).

The criminal convictions span a period of two decades. We agree with the Board that Newton's conduct since 1990 does not constitute clear and convincing evidence of full and complete rehabilitation. On this alone, we might deny him admission; but, when his business practices enter the calculus, denial becomes inevitable.

If certification were to be granted despite Newton's business practice, we must be reasonably convinced that he can avoid the temptation to act as he has previously acted; any doubt must be decided in favor of the public's protection. In re Lubonovic, supra. Newton contends his reformation is demonstrated by the lack of consumer complaints brought against him while in the State of Georgia. This argument is of no consequence. His unfair trade practices developed over a period of years in the Carolinas, but his work history in this State is significantly shorter. In fact, it is simply too short to convince us that Newton will act ethically in the future.

Decision affirmed. All the Justices concur.

5.

November 21, 1995

Clerk, Supreme Court of Georgia
Honorable Chief Justice Robert Benham
Honorable Justices: Norman S. Fletcher
Leah J. Sears
Carol W. Hunstein
George H. Carley
Hugh P. Thompson

Harris Hines

Supreme Court of Georgia
State Judicial Building
Atlanta, Georgia 30334

Re: J.W.N. - Case No. S96A0220

Dear Justices of the Court:

Please permit Appellant, in the above captioned case, to file this letter/brief in response to the Board to Determine Fitness of Bar Applicant's November 17, 1995 response to my November 13, 1995 Motion for Reconsideration.

To begin with, the Board's attorney, in their response, is correct about the hearing officer's remarks on page 2, second paragraph. Upon checking, I find that I was in error as I was looking at the wrong document. Neither of the statements on page 2 or page 8 of appellant's motion were in the hearing officer's Finding of Facts in this case.

I apologize for this error and assure this Court that I was not trying to mislead it.

I disagree with the Board's attorney as to the Court's November 3, 1995 opinion in this case being identical to the Court's September 11, 1995 Order. There were changes in this November 3, 1995 opinion which I will not attempt to point out because, by comparing one with the other, it can be seen. The very fact that the Order was changed to an Opinion was a change in the character of the Court's ruling and merits a Motion for Reconsideration. Therefore, it was proper to file a Motion for Reconsideration to the November 3, 1995 opinion published by this Court.

Respectfully submitted.

Yours very truly,
/s/
GEORGE T. SMITH

GTS:dw

cc: Julie Anderson
Office of Bar Admissions

6.
In re J.W.N.
No. S96A0220
Supreme Court of Georgia
Nov. 3 1995
Reconsideration Denied Nov. 3, 1995

Applicant sought certification of fitness to practice law. The Board to Determine Fitness of Bar Applicants declined certification, and applicant appealed. The Supreme Court held that denial of certification was appropriate in light of applicant's history of criminal convictions and questionable business practices.

Affirmed

[1] ATTORNEY AND CLIENT

Where applicant for admission to bar has criminal record, applicant must prove full and complete rehabilitation by clear and convincing evidence.

[2] ATTORNEY AND CLIENT

Unethical or questionable business practices constitute proper basis for denial of admission to the bar.

[3] ATTORNEY AND CLIENT

Denial of certification of fitness to practice law was proper in light of applicant's history of criminal convictions, which spanned 20-year period, and questionable business practices, notwithstanding applicant's conduct since entering law school which included church, charitable, and school activities and graduating first in his law school class.

George T. Smith, Barnes, Browning, Tanksley & Casurella, Marietta, Ga. for J.W.N.

Julia B. Anderson, Asst. Atty. Gen., Department of Law, Atlanta, for State Bar of Georgia.

PER CURIAM.

J.W.N. applied to the Board to Determine Fitness of Bar Applicants for certification of fitness to practice law. After the Board tentatively denied his application, a hearing officer recommended certification based on his behavior since entering law school. The Board, remaining focused on pre-law-school behavior, disagreed with the hearing officer and formally declined certification. J.W.N. appeals. Because we find the Board's reasoning persuasive, we affirm.

The evidence indicates a long history of questionable behavior. In 1965, applicant's driver's license was revoked after he pled guilty to reckless driving. In 1969, he was expelled from Wake Forest Law School for lack of candor. He pled guilty to disorderly conduct in the early 1970's, and he was convicted of harassing phone calls in 1981. Five years later, he was found guilty of assault. In 1989, he was expelled from York

Technical College for altercations with other students. In that same year, he pled guilty to a charge of threatening phone calls. [FN1].

[FN1.] During the application process, J.W.N. disclosed that a number of other criminal charges had been brought against him over a span of twenty years. Because applicant was not convicted of these charges, they play no part in our determination as to whether applicant should be certified.

Evidence of applicant's unscrupulous business practices is pervasive. He worked in plumbing and household applicant repair, and he did repair work as an independent contractor for Sears Roebuck & Company. In 1984, Sears severed the relationship and later obtained a temporary restraining order to stop him from using a telephone number that Sears' customers used to request repairs. In 1985, after a significant number of consumer complaints, the North Carolina Attorney General filed suit against applicant for unfair and deceptive trade practices. The court ordered him to pay civil penalties, canceled all contracts he made with customers since 1981, and ordered him to make restitution.

In 1987, after his North Carolina plumbing license and driver's license were revoked, applicant moved to South Carolina. Two years later, the South Carolina Attorney General filed suit against him for unfair trade practices. That suit led to an order imposing civil penalties and enjoining

him from any involvement in his trades. Soon after the judgment, applicant filed bankruptcy.

In 1990, applicant moved to Georgia and enrolled in the John Marshall Law School. He became involved in church activities and volunteered with Habitat for Humanity. He was president of the Student Bar Association and graduated first in his class. In 1992, he applied for certification of fitness to practice law. In a request for information about applicant, the President of John Marshall Law School indicated that he would not recommend him for a position of trust.

After reviewing the hearing officer's report and conducting its own interview with applicant, the Board declined to certify him. We agree that he should be denied certification.

[1][2] Where an applicant for admission to the bar has a criminal record, he must prove full and complete rehabilitation by clear and convincing evidence. In re Cason, 249 Ga. 806, 295 SE2d 520 (1982). Moreover, unethical or questionable business practices constitute a proper basis for denial of admission to the bar. In re Lubonovic, 248 GA. 243, 282 SE2d 298 (1981).

[3] The criminal convictions span a period of two decades. We agree with the Board that applicant's conduct since 1990 does not constitute clear and convincing evidence of full and complete

rehabilitation. On this alone we might deny him admission; but, when his business practices enter the calculus, denial becomes inevitable.

If certification were to be granted despite applicant's business practices, we must be reasonably convinced that he can avoid the temptation to act as he has previously acted; any doubt must be decided in favor of the public's protection. In re Lubonovic, supra. Applicant contends his reformation is demonstrated y the lack of consumer complaints brought against him while in the State of Georgia. This argument is of no consequent. His unfair trade practices developed over a period of years in the Carolinas, but his work history in this State is significantly shorter. In fact, it is simply too short to convince us that applicant will act ethically in the future.

Decision affirmed.

All the Justices concur.

7.

September 2, 1993

Mr. William K. Moore
Deputy Attorney General
State of South Carolina
State Capitol
Columbia, South Carolina 29216-0028

Re: Joseph W. Newton

Dear Mr. Moore:

Enclosed herewith are the original signed copies of the settlement agreement executed by Mr. Newton with the States of North Carolina and South Carolina together with a copy of the listing contract he has for the sale of the Charlotte, North Carolina real property.

Thank you very much for your assistance in this matter.

Yours very truly,
/s/
GEORGE T. SMITH

GTS:dw

Enclosures

8.

MEMORANDUM OF AGREEMENT

This agreement is entered into this 1st day of July, 1993 by and between the North Carolina Attorney General, the South Carolina Attorney General and Joseph W. Newton for the purpose of setting forth the terms and agreements pertaining to the sale of real property owned by Joseph W. Newton.

WHEREAS, the State of North Carolina has a judgment against Joseph W. Newton arising out of the action, State of North Carolina ex rel. Lacy H. Thornburg, Attorney General vs. Joe Newton, Inc. and Joseph W. Newton, 85 CVS 2157 (Wake County, N. C., Superior Court, March 30, 1987). Said judgment, inter alia, provides for the payment by the

defendants of civil penalties to the State of North Carolina in the amount of $25,000 and attorneys fees in the amount of $10,488.95 to the State of North Carolina, plus interest. The judgment also provides for the cancellation of all contracts entered into by the defendants with North Carolina consumers after March 29, 1981.

WHEREAS, the State of South Carolina has a judgment against Newton in the action, State of South Carolina ex rel t. Travis Medlock, Attorney General vs. Joseph W. Newton, et al., No. 89 CP46-1898 (York County, South Carolina, Court of Common Pleas, March 20, 1990). Said judgment, inter alia, provides for the payment by the defendants of civil penalties to the State of South Carolina in the amount of $30,000.

WHEREAS, no amount has been paid to date on the above-referenced judgments.

WHEREAS, Joseph W. Newton obtained a discharge in bankruptcy from the United States Bankruptcy Court for the District of South Carolina (Bankruptcy No. 90-029) on May 22, 1990.

WHEREAS, the only substantial asset owned by Joseph W. Newton consists of two tracts of undeveloped land in Mecklenburg County, North Carolina, consisting of approximately four acres on Allen Road South (Parcel No. 045-172-05) and approximately one and one-half acres on Lake Road (part of lot numbers 95 and 96-102, block E, recorded

map 6, p. 224) (Parcel No. 045-326-13) in Charlotte (hereinafter referred to as "the property" or the "Allen Road South" and "Lake Road" property).

WHEREAS, Joseph W. Newton has agreed to sell such real property and to apply the proceeds to any amounts owed the states of North Carolina and south Carolina for civil penalties, attorneys fees, costs or restitution pursuant to the aforesaid judgments, irrespective of his discharge in bankruptcy.

WHEREAS, the Attorney General's office of North Carolina has agreed to accept the proceeds of a commercially reasonable sale of Newton's Mecklenburg County, North Carolina real property in full settlement and satisfaction of all monetary claims it has against Newton arising out of the above-referenced cases, including civil penalties, attorney fees, costs and consumer restitution.

IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. that Joseph W. Newton will immediately list his Mecklenburg County, North Carolina property for sale with a licensed real estate broker in Meckleburg County.
2. That Newton and the listing agent will promptly advertise the property for sale and make every reasonable effort to promote the property for a prompt sale.

3. That the property shall be sold as two separate tracts, without the necessity of further subdivision.

4. That Newton shall provide all information necessary to facilitate the sale of said property, and shall take all reasonable acts necessary to facilitate and complete the sale of the property.

5. That the commission rate payable to the selling agent shall be a reasonable rate which may exceed the customary commission percentage in Mecklenburg County, in order to facilitate a prompt sale of the property.

6. That the property will be offered for sale at a reasonable market price that, in the opinion of the listing agent, is calculated to lead to a prompt sale of the subject property. The property shall not be sold for less than Forty-six Thousand Seven Hundred Fifty and no/100 ($46,750.00) Dollars [3] for the Allen Road South property and Thirteen Thousand Two Hundred and no./100 ($13,200.00) Dollars[4] for the Lake Road property without the approval of the North Carolina and South Carolina Attorney General's offices.

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[3] the tax assessed value of Forth-two Thousand Five Hundred and no/100 ($42,500.00) Dollars plus 10%.

[4] The tax assessed value of Twelve thousand and No/100 ($12,000.00) Dollars plus 10%.

7. That the proceeds of the sale of the subject property, after deduction for ordinary and reasonable expenses of sale, shall be paid as follows in the following priority.

a) First to the State of North Carolina to satisfy its judgment lien in the amount of $35,488.95 plus lawful interest, and to any other judgment lienholder of record, and to any local taxing authority with a claim for unpaid property taxes. (The Parties are informed that $3,571.93 is owed on the Allen Road South property and $993.08 is owed on the Lake Road property for past due taxes as of June 15, 1993.

b) Second, to the State of South Carolina, in the amount of Forty-Three Thousand Two Hundred Eighty-four and 29/100 ($43,284.29) Dollars to be applied to restitution claims to individual consumers to be distributed by the South Carolina Attorney General. The parties agree that the South Carolina Attorney General shall have the sole discretion to determine the amount to be distributed to individual South Carolina consumers.

c) Third, if any proceeds remain after paying the above claims, they shall be divided equally between the states of North Carolina and South Carolina, to be applied toward any remaining restitution,

penalties, or costs, in the discretion of the respective Attorneys General.

8. Upon payment of an amount sufficient to satisfy the liquidated amount of its judgment, the North Carolina Attorney General agrees to satisfy and release its judgment lien on the subject property.

9. Joseph W. Newton agrees that he shall not collect, receive, or hold any proceeds from the sale of the subject property, and that all proceeds resulting from the sale of each tract shall be paid promptly and directly to claims and expenses as set forth above,.

10. The North Carolina Attorney General's office agrees to accept the proceeds from the sale of the subject real property in an amount not less than $35,488.95 in full satisfaction of its judgment lien against Joseph W. Newton and in full settlement of its monetary claims against Newton arising out of the case, State ex rel. Thornburg vs. Joe Newton, Inc. and Joseph W. Newton, 85 CVS 2157.

11. The South Carolina Attorney Genenral's office agrees to accept its share of the proceeds from the sale of the subject real property in full satisfaction of its monetary claims against Joseph W. Newton arising out of the case State ex rel. Medlock vs. Joseph

W. Newton, et al, provided the proceeds to the South Carolina Attorney General equal or exceed Forty-Three Thousand Two Hundred Eighty-four and 90/100 ($43,284.89) Dollars.

12. Upon execution of this agreement, Joseph W. Newton agrees to promptly dismiss any pending legal actions he has pending against the States of North Carolina or South Carolina, specifically including the federal interpleader action in the Northern District of Georgia and the action entitled Joseph W. Newton et al. v. Michael F.Easley, Attorney General (93 CV 03555) in Wake County, North Carolina.

13. Joseph W. Newton shall provide copies of this agreement to the real estate agent listing the property for sale, to the closing attorney and to any escrow agent holding deposits, payments or other funds relating to the sale of the subject property. Newton agrees to direct anyone handling the proceeds of the sale of the subject property to disburse the funds as set forth herein.

The parties agree that Newton's failure or refusal to carry out the terms of this Agreement in its entirety shall constitute a breach of the Agreement and that this Agreement shall be enforceable by the State of North and south Carolina in the courts of their respective states, and that the remedies of specific performance and injunction

shall be available to said states as appropriate to enforce compliance with this Agreement.

Consented to this 1st day of July, 1993.

MICHAEL F. EASLEY
Attorney General
State of North Carolina

/s/ Joseph W. Newton

/s/Phillip A. Lehman
Assistant Attorney General

TRAVIS T. MEDLOCK
Attorney General
State of South Carolina

s/s William K. Moore
Deputy Attorney General

STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT

COMES NOW before the undersigned officer duly authorized to administer oaths, T. DAVID FENSTER, who after being duly sworn deposes and states as follows:

1.

My name is T. David Fenster. I am President of John Marshall Law School. I am sui juris
and over age eighteen, and I make this affidavit based on my own personal knowledge and belief.

2.

I first became acquainted with Joe Newton upon his entry to John Marshall Law School in June of 1990.

3.

Academically, Mr. Newton was a most superior student. He graduated Summa Cum Laude June 1, 1992, with a juris doctorate.

4.

Mr. Newton has previously made known to me and John Marshall Law School both the prior record upon which he was excluded from the Wake Forest Law School, as well as circumstances related to actions against him for consumer fraud in both North and South Carolina, as well the bankruptcy proceedings which were indirectly related thereto. Mr. Newton, over the course of the last several years, has sought my advice and counsel regarding the North and South Carolina incidents. These consultations were instituted by Mr. Newton upon his own volition. During the course of such counseling, Mr. Newton has consistently expressed a seemingly genuine remorse and appreciation for the nature and quality of his actions and the impact which they have had upon others.

5.

In the course of such counseling, it was my method to inquire of Mr. Newton upon those issues which seemed to me to go to the root of the

circumstance. It was my desire to permit Mr. Newton an opportunity to think through the impact of his actions upon those involved, as well as what he could do and should do to remedy the circumstance. It is by and through Mr. Newton's response to these inquiries that I have formed an opinion to the effect that (a) Mr. Newton is aware of the nature and quality of his acts, (b) is genuinely remorseful for them, (c) is aware of the impact which his actions have had upon others, (d) has logically formulated a plan to remediate the circumstances as effectively as possible, and (e) that such plan for remediation is based upon an analysis of moral imperative and is not merely predicated upon the desire to be certified as fit for the practice of law.

6.

It is further my understanding that the states of North and South Carolina had proceeded to consent judgments and had liened various properties in those several jurisdictions and had subsequently failed to either perfect their liens and/or foreclose their liens for the benefit of those consumers on which behalf their actions were originally taken. Furthermore, I understand that Mr. Newton by and through his counsel, George T. Smith, as well as by and through his own personal actions, has encouraged and persuaded those several jurisdictions to proceed to an appropriate resolution of those matters which they had previously for a substantial period of time failed to move forward.

7.

It should be noted that benefits which may accrue to North and South Carolina citizens on whose behalf state actions were taken are enuring only as a result of the latest actions taken by Mr. Newton to insure such fact.

8.

It is my opinion that Joe Newton has not merely purged himself of his prior wrongdoing but has exhibited a genuine understanding of the nature and quality of his acts and a heartfelt remorse therefore. Based upon my personal observations of Joe, which include his matriculation in the law school for a period of three years as well as numerous personal conversations of this and related subject matters, it is my personal and informed opinion that Joe Newton has rehabilitated himself and is fit for the practice of law.

FURTHER AFFIANT SAYETH NOT.

T. David Fenster

Sworn to and subscribed before me
this 5th day of July, 1993.

Notary Public, commission expires 1996

SUPREME COURT OF GEORGIA
OFFICE OF BAR ADMISSIONS
POST OFFICE BOX 38466
ATLANTA, GEORGIA 30334

BRR
BOARD TO DETERMINE FITNESS
HULETT H. ASKEW

DIRECTOR OF ADMISSIONS
OF BAR APPLICANTS

BOARD OF BAR EXAMINERS May 19, 1992

In Re: Joseph Wesley Newton
SSN: 243-74-8426

Dear Sirs:

This applicant has applied for admission to the practice of law in Georgia. As is does with all applicants, this office is conducting an investigation into the applicant's fitness to be licensed as an attorney. The applicant has indicated attendance at your school from 06/90-present.

The Board to Determine Fitness of Bar Applicants would appreciate your answering the following questions about the applicant's enrollment in your school. If some of these questions are not applicable, please tell us.

Many thanks,

Barbara Riggs
Application Analyist

1. What dates did the applicant attend your school? 6-90/present

2. What degree was awarded, if any? No date degree awarded.

3. Would you recommend the applicant for a position of trust? NO

   If not, please tell us why. No documented reason.

4. Was the applicant ever the subject of academic or social discipline at your school? No If so, for what reason and what was the nature of the discipline?

5. Is the applicant eligible for enrollment in your school at the present time? Yes. If not, please tell us why not.
6. Was the applicant the recipient of any sort of guaranteed student loan while enrolled at your school? No

7. Do you records reflect that the applicant has ever been:

   placed on probation at your school? No.
   arrested? No
   accused of a violation of trust? No
   a party to a law suit? No
   a debtor in a bankruptcy case? No
   addicted to the use of intoxicating liquors or narcotics? No
   afflicted with or received treatment for emotional disturbance? No
   afflicted with or received treatment for mental disorders? No
   afflicted with or received treatment for nervous disorder? No
   denied admission to the Bar of any other state? No
   delinquent in any financial obligations? No

If you answered yes to any of these questions, please tell us about it. You may also use this space for your evaluation of the applicant.

The information furnished is given with the understanding that it will be revealed to no one not interested in the applicant's admission to the Georgia Bar.

Name of the person completing response
T. David Fenster
Title, President

Date of Response

SUPREME COURT OF GEORGIA
BOARD TO DETERMINE FITNESS OF BAR APPLICANTS

In Re:
JOSEPH WESLEY NEWTON
Volume II

The transcript of proceedings had before Honorable M.T. Simmons, Hearing Officer, at Room 505 of the Legislative Office Building, Mitchell Street, Atlanta, Georgia, reported by Lagena O. Hill, Certified Court Reporter, commencing at 9:45 a.m., on July 6, 1993.

APPEARANCES OF COUNSEL:

For the State: Julie B. Anderson,
Asst. Attny. General

For the Petitioner: George T. Smith, Esq.

Page 8 of the proceedings:

(Witness sworn.)

GILBERT CHICHESTER

being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Chichester, are you an attorney at law?
A. Yes, sir, I am.
Q. Where is your home?
A. My residence is --
Q. I live in North Carolina.
Q. Are you a member of the North Carolina Bar?
A. Yes, sir, I am, North Carolina and Virginia Bar.

Q. North Carolina and Virginia Bar. What law school did you attend?
A. I attended the University of Richmond Law School.
Q. How long have you been a practitioner?
A. 18 years?
A. 18 years, yes, sir.
Q. Where do you practice, in what city?
A. I practice in Richmond, Virginia. I have an office in Richmond, Virginia, and in Littleton, North Carolina.
Q. As a practicing attorney, and in connection with other work, did you ever have a reason to check up, investigate James L. Blackburn?
A. Yes, sir, I did.
Q. Was he a lawyer?
A. Yes, sir.
Q. Located where?
A. With an office in Raleigh, North Carolina.
Q. When did you start investigating his background?
A. Actually, I started investigating Mr. Blackburn in January of 1993.
Q. What caused you to start checking on Mr. Blackburn?
A. I was retained by several clients who had been clients of his who suspected misconduct on his behalf.
Q. Upon you investigation, what did you find as to Mr. Blackburn's conduct in the legal field?
A. I found that Mr. Blackburn had been a graduate of Wake Forest Law School; that he had practiced as an assistant attorney general for the State of North Carolina; and subsequently was appointed and approved by the Congress to be the U.S. Attorney for the Eastern District of North Carolina; that he prosecuted a very noteworthy case, Jeffery McDonald, a Green Beret doctor, and gained his notoriety; that after that, when the administration changed from democratic to republican that he went into private practice with a very well-known firm in North Carolina that has offices in Raleigh, Winston-Salem, and Charlotte; that he practiced as a private practitioner during that period of time; and that as early as 1985 he started representing at least one of the clients who I was retained by on different legal matters, and on a different series of cases represented that particular family up until January of

1993.. I'll be glad to go into the details of that, if you'd like for me to.

Q. Not at this time. In the course of your investigation, did you ever have cause to look into the case of State of North Carolina, et al., Lacy H. Thornburg, Attorney General vs. Joe Newton, Incorporated, and Joseph W. Newton, and others?

A. Yes, I did.

Q. How extensively did you go into that?

A. I reviewed the court records in Wake County, North Carolina, and the appellate records that were also in Raleigh. I might say that I was not asked by anyone to do that. I was -- that cases was brought to my attention by Mr. Newton, who I have never met, and I've talked to on the phone and corresponded with. And I did that in preparation for knowing that I was going to be subpoenaed for this hearing; and I also did it in further investigation of the other cases that I was investigating in reference to James Blackburn.

Q. What did you find when you checked this case, as to the records concerning both the trial court and the appellate court?

A. I found that Mr. James Blackburn was a an attorney that was retained to represent Mr. Newton and his company; that at the trial court level that the discovery that was submitted to them by way of interrogatories and requests for admissions were not responded to by the attorney for Mr. Newton, and that consequently, as a result of that, the State of North Carolina was able to obtain a default judgment in the matter; that from looking at the records, just on the face of the records themselves, that the discovery should have been responded to and could have been responded to; but it was not responded to.

Q. Is there anything -- can you tell anything from a record when the default judgment was issued, as to why it was issued?

A. It was issued because of the discovery not being -- and requests for admissions not being responded to.

Q. And the court did what as a result of that?

A. Entered -- considered the admissions to be admitted, and based on that entered a default judgment.

Q. What about the appellate process? Could you tell anything about the appellate process as far as Mr. Blackburn was concerned?

A. Yes, I can. The case was appealed to the North Carolina Court of Appeals, and the appeal was denied as a result of the appeal not being pursued by Mr. Blackburn in a timely fashion.

Q. And you investigation of Mr. Blackburn you said started about '85?

A. Yes, my investigation started in --

Q. His activities as of '85?

A. Yes.

Q. What did you find as to his overall representation of clients during that time?

MS. ANDERSON: I object to that question. I don't know that it's relevant to this matter.

MR. SMITH: Well, it will show a pattern, Your Honor.

HEARING OFFICER: I'm not sure it's that relevant either, but I'm going to let it in. I'll sort through that as to what --

MR. SMITH: It shows a pattern, Your Honor, not just it happened to be one case he did this way, but did them all.

THE WITNESS: As to the cases that I looked into, which of course were the cases that I was retained to look into as well as the Newton case, the way that he handled the Newton case was fairly consistent with what he did with the other clients that I also investigated; that is, that he neglected matters, continued to string them along. What he did with Mr. Newton, I cannot tell you, but I can tell you on the cases that I do know personally that I have investigated in detail, that he continued to string the clients along, collect fees from them without doing work that was both required on the case, and that he was telling the clients that he was doing.

BY MR. SMITH:

Q. As a result of you investigation and others, what has happened to Mr. Blackburn?

A. He tendered -- turned in his Bar license, and those license were accepted; and he's now been disbarred.

Q. When did that take place?

A. I believe the actual order of disbarment was entered maybe in April. He turned his license in through his attorney probably in January of 1993.

MR. SMITH: I don't have any further questions, Your Honor.

CROSS-EXAMINATION

BY MS. ANDERSON:

Q. Mr. Chichester, I'm Julie Anderson, and I represent the Fitness Board in this matter. I have a few questions for you. You said you started the investigation in January of 1993?

A. Yes, I did.

Q. Was that at Mr. Newton's request?

A. It was not at Mr. -- he never requested me to investigate Mr. Blackburn.

Q. How did you first become aware of that case? I' didn't understand that.

A. Of the Newton case?

Q. Yes.

A. The case that I -- the cases that I have, and in my investigation and actions against Mr. Blackburn became public knowledge through the Charlotte newspapers, the Raleigh News, and Observer, state-wide newspapers. And I presume that as result of that, Mr. Newton called me. At least he called me. Mr. Newton called me.

Q. Mr. Newton called you?

A. And I think it was a result of him seeing these articles in the newspapers.

Q. Was that the first that you learned about the case of the North Carolina versus Mr. Newton?

A. Not even then did I know about it. It was only probably in March or so when Mr. Newton told me about this case, that I then took it upon myself to go to Raleigh and to review the case as well.

Q. And to look at that case?

A. Yes.

Q. And in the documents that you reviewed, you went to the courthouse and reviewed those, the documents that were in the courthouse?

A. Yes. Yes, I did.

Q. Were the transcripts of any hearings a part of those records that you reviewed?

A. Not that I reviewed.

Q. Okay. And as you indicated, the reason for the default judgment was the fact that discovery was not responded to, correct?

A. Yes. I know nothing about the merits of the case, and I'd like to make sure that that's absolutely clear. I'm simply talking about looking at the procedural aspect of it.

Q. Okay. Would you agree, Mr. Chichester, that it's not clear from the pleadings in that case whose fault it was that the discovery was not responded to, whether it was Mr. Blackburn or his client's refusal to assist Mr. Blackburn in putting the discovery together?

A. No, I probably wouldn't agree to that, because of what I now know about Mr. Blackburn and his conduct during that period of time; and also because there was no correspondence in the files indicating that Mr. Blackburn was seeking continuances, which you are entitled to under the North Carolina Rules, in order to get this done.

MS. ANDERSON: Okay. I don't have any further questions. Thank you.

11 U.S.C. section 525: Protection against discriminatory treatment.

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499-499s) [7 USC section 181 et seq.], and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture of the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943 (57 Stat. 422; 7 U.S.C. 204) [7 USC section 204], a governmental unit may not deny, revoke, suspend; or refuse to renew a license, permit, charter, franchise, other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title [11 USC section 101 et seq.] or a bankrupt or a debtor under the Bankruptcy Act or another person

with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title [11 USC section 101 et seq.] or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title [11 USC section 101 et seq.] or that was discharged under the Bankruptcy Act

IN THE SUPREME COURT

STATE OF GEORGIA

In Re: J. W. N. CASE NO. S96A0220

MOTION FOR RECONSIDERATION

Comes now In Re: J. W. N. within the time provided by the law and files this his Motion for Reconsideration to the Opinion in the above captioned matter dated October 3, 1995.

In both the Court Order of September 11, 1995, and the Opinion of November 3, 1995, after the introductory sentences, is the following: "After the board tentatively denied his application, a hearing officer recommended

Certification based on his behavior since entering law school. The board, remaining focused on pre-law school behavior, disagreed with the hearing officer and formally declined certification." The following was included in the letter of October 14, 1994, from the Office of Bar Admissions, signed by its Director, Mr. Hulett H. Askew; "Even before considering whether your conduct since 1990 demonstrates rehabilitation, the Board believes two factors must be considered: (1) has the Applicant acknowledged his mistakes and taken responsibility for past conduct; and (2) has the applicant made restitution to those individuals harmed by his actions. The board finds that you have failed to present clear and convincing evidence on both counts. Therefore, it is not necessary to consider your conduct since 1990."

It is disturbing to note that the Court, as well as the board, chooses to dwell on pre-1990 and fail to address 1990 to the present.

The hearing officer, Mr. M. T. Simmons, held a two day hearing. During this time, he heard 29 witnesses testify on behalf of the applicant. No one, the board nor the Court, has gone on record as to who these people were.

Applicant thinks it well to address who they were as he contends Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 17 S.Ct. 752, 1 L.Ed.2d 796, 64 A.L.R. 2d 288 requires it. The following is the finding of the hearing officer, Mr. M. T. Simmons:

APPLICANT [J.W.N.] PRESENT MORAL CHARACTER

Using the generally accepted standard of "good character at the time of application is the appropriate test." Applicant [J.W.N.] easily qualifies for admission to the State Bar of Georgia.

He comes highly recommended by people from all walks of life. He is a dedicated Christian, who admittedly has in the past acted in a manner he is not proud of. Nevertheless, Schware, infra., requires that his moral character be judged at the present time and not upon past behavior. [J.W.N.] current good character is attested to by three judges in two different states. Senior Superior Court Presiding Judge Ralph Hicks, Judge Robert Cochran, and Judge Gilbert McCrowey of Rock Hill, South Carolina. Two district attorneys recommended [J.W.N.]: Assistant Chief District Attorney Fred Larsen (who drove all the way to Atlanta from Dublin, Georgia) and Assistant District Attorney David Gafnea (who serves in the Blue Ridge Judicial Circuit). Federal Police Officer James Atwood, Chief Mike Thomas of the Donaldsonville Police Force, and former Lilburn Police Detective Mike Puglise, all testified that [J.W.N.] had superb character and unselfish dedication to help his fellow man. Former Georgia State Senator Joe Hammil was especially enthusiastic about [J.W.N.] good character.

Law Professors Lawrence Eastburn, Barry Broome, Wayne Rasmussen, and Omni Walker, all testified that he was one of, if not, the best law student they had ever taught. [J.W.N.] good character was verified by Atlanta Law School Dean Harvey Muskowitz, where [J.W.N.] recently received his L.L.M. and continues to audit law school courses. Dr. David B. Meltz, Dean of the John Marshall School of Law, said that "[J.W.N.] was president of the Student Bar Association...and...was instrumental in the research and adoption of the Student Honor Code." Doug Price, Administrative Assistant at John Marshall Law School, said that "[J.W.N.] is the only person, to my knowledge, who has ever graduated John Marshall Law School with a 3.0 grade average."

The Reverend J. Jeffrey Williams said that "[J.W.N.] organized an inexpensive bar review program for those students who could not afford the commercial course" and also knows [J.W.N.] as a Christian in his role as a pastor. Law student Dell Jackson and practicing attorney Teri Lee both heartily endorse [J.W.N.] good character and moral fitness.

Dr. Ernest Fitzgerald, former Bishop of the United Methodist Church in Atlanta, affirmed [J.W.N.] membership at Centenary Methodist Church from 1966 until 1982 and his service as an assistant

Boy Scout master. Attorney Tom Griffin of Kinston, North Carolina, wrote that "During 1976-77, [J.W.N.] was a member of Queen Street Methodist Church and was a teacher in the Sunday School for approximately a year. He was also a member of the Board of Trustees of the Church and an assistant Boy Scout leader...and recommends him as a good church member, a civic minded person and a person of good character and reputation."

Dr. W. Frank Harrington, Pastor of Peachtree Presbyterian Church, the largest Presbyterian Church in America, took time to comment on [J.W.N.] character:

> "[J.W.N.] has been a member...for approximately three and one-half years...[J.W.N.] has taught in several areas of our Sunday School... [J.W.N.] has been extremely active in the Habitat for Humanity project...(H)e has worked with the church in numerous programs, including the Christmas in April project, which repairs houses for the needy. [J.W.N.] has been a loyal church member and I am not aware of any reason why the Board should not certify [J.W.N.] moral fitness application."

Dr. Jeff White, Associate Minister of Peachtree Presbyterian Church, says that "I believe he is a man of great integrity, unselfish devotion to his fellow man, a tireless Christian worker in the Presbyterian Church, and a valuable asset to our programs." Tonis Lansing, Director of Community Ministries at Peachtree Presbyterian Church, which has a nationwide ministry, considers [J.W.N.] "an extremely valuable asset to our church and its

missions." Rodney Petty, A Peachtree Presbyterian Church member, says that "I have seen [J.W.N.] almost every Sunday since first meeting him in February 1990...He gives freely and generously of his time and talent to many projects at our church."

[J.W.N.] has spent his own time and money to help Habitat for Humanity in metro Atlanta over the past three years. He is now in the process of having all of his electrical and mechanical trade licenses reinstated in North Carolina so that he can, by reciprocity, transfer the licenses to Georgia in order to further enhance his contributions to Habitat for Humanity. This has been a very expensive and time consuming process, involving preparing for and taking two extremely difficult state trade exams with further examination by the State of Georgia before being licensed here. [J.W.N.] has spent over a month preparing for the electrical and plumbing exams; he has traveled almost 2,000 miles to and from Atlanta, Winston-Salem, and Raleigh to attend trade license preparation courses and take the exam; and he has spent hundreds of dollars for the courses, exam fees, and travel expenses. He is now and always has been firmly committed to aiding Habitat for Humanity in every way possible. These licenses will be extremely valuable to Habitat for Humanity and Peachtree Presbyterian Church's Christmas in April Program in helping these two programs improve and build houses for underprivileged people.

> "If [J.W.N.] were able to be licensed in Georgia in the plumbing, electrical, heating, and air-conditioning trades, he

would be an enormous benefit to our outreach programs..." (Tonis Lansing, Affidavit)

"[J.W.N.] has volunteered countless hours to Habitat for Humanity in Atlanta, performed minor repairs within the appliance, plumbing, electrical, and heating and air-conditioning trades for people in our (Sunday School) class who otherwise would not have the financial resources to obtain these repairs. He is one of the very few people in our church with this mechanical aptitude. For a man who has very little time, he has used it wisely and unselfishly." (Rodney Petty, infra."

"I am President of the Clayton County affiliate for Habitat for Humanity. In that capacity, [J.W.N.] called me and offered to try to establish a strong working relationship between the Clayton county affiliate and the Atlanta Habitat for Humanity affiliate." (Greg K. Hecht, Former Assistant District Attorney, current Staff Attorney, and Clayton County Habitat for Humanity President)

"[J.W.N.] is a valuable asset to Habitat for Humanity in Atlanta. He can greatly enhance his value to us by becoming a licensed Georgia contractor in the plumbing, electrical and heating trades...I believe that [J.W.N.] has high and good moral character... He has consistently demonstrated this by his unselfish contribution to 'Habitat' over the past three years. He has contributed countless hours of his time and skill to numerous 'Habitat' projects." (Gilbert Nicholson, Habitat for Humanity Carpenter and Construction Foreman).

END OF FINDINGS

There were only three witnesses that testified for the board. None of these witnesses refuted any of the above nor did the board submit a single witness that testified that he did not have present good moral character. The board did not challenge his good moral character since 1990. They just refused to address it. In the absence of this, it is unrefuted that he is of good moral

character and fits the accepted standard of "good character at the time of application is the appropriate test."

In addition to the above, there were 27 affidavits by individuals filed that attested to his rehabilitation and present moral character and fitness to practice law in Georgia.

Of these 27, there was, among others:

4 Pastors, including Dr. W. Frank Harrington, Pastor, Peachtree Presbyterian Church and Dr. Ernest Fitzgerald, former Bishop of the United Methodist Church

13 Attorneys at law, which includes 2 judges, 1 former Attorney General of North Carolina, and presently Secretary of State of North Carolina

2 Doctors

1 Dean of School of Law

1 Executive Secretary of the State Board of Examiners of Plumbing, Heating and Fire Sprinklers Contractors.

The Special Master, based upon the above, stated in his recommendation to the board, thusly: J.W.N. has demonstrated unequivocally his fitness for admission to the Georgia State Bar. The Board chooses to ignore this finding and focus on pre-law school behavior. It makes no attempt

to justify its reasons for the denial. Just a string of generalizations and unproven accusations.

The opinion also stated: "In a request for information about applicant, the President of John Marshall Law School indicated that he would not recommend him for a position of trust."

Two observations:

1. Applicant is unable to find any "request for information about the applicant," to the President of John Marshall Law School in evidence; and,

2. If there is, Black's Law Dictionary, Special Deluxe Fifth Edition, states: Indication - "In the law of evidence, a sign or token; a fact pointing to some inference or conclusion."

Indicative evidence - "This is not evidence properly so called, but the mere suggestion of evidence proper, which may possibly be procured if the suggestion is followed up."

The board had John Marshall Law School President Fenster subpoenaed, he was there, they chose not to call him. The board had a chance to prove whether or not President Fenster would recommend applicant for a position of trust, but the attorney chose not to do so. The burden was on the board to prove this charge after applicant proved his good, moral character,

which he did. The board never entered any proof of this and it is error to premise a decision upon this baseless statement.

In dealing with applicant's business practices, the Court said:

> "If certification were to be granted despite applicant's business practices, we must be reasonably convinced that he can avoid the temptation to act as he had previously acted; any doubt must be decided in favor of the public's protection."

In re Lubonovic, 248 Ga. 243.

In the Matter of Johnson, 144 GA 109, dealt with the readmittance to the practice of law of one who had been convicted of a felony involving moral turpitude, the Court had this to say: "In its report and in its brief the State Disciplinary Board has indicated that it considers that petitioner's burden is to show by clear and convincing proof that he is not likely to again commit a crime involving moral turpitude if reinstated. The board discounts petitioner's unmarked record since his conviction by pointing out that it is consistent with his record prior to conviction; i.e., his clean record prior to conviction did not prevent the crime for which he was convicted and therefore his record since conviction is not evidence that another crime will not be committed. Using this equation, no person could prove rehabilitation by a spotless record alone, no matter how long maintained since the disbarring conduct. Such a person could prove rehabilitation only by proof of his having rejected specific opportunities for criminal conduct. We find this standard to be too high for showing rehabilitation from a single offense. As was said in Resner v. State Bar of California, 433 P2d 748, 755-756 (1967): 'There can, of course, be no absolute guarantee that petitioner will never engage in misconduct again. But if such a guarantee were required for reinstatement none could qualify. All that we can require is a showing of rehabilitation and of present moral fitness.'

In answer to that portion of the opinion that says, "any doubt must be decided in favor of the public's protection," is an attempt by the board and the Court to protect the public from an act in the future. Schware says, "It must be borne in mind that if petitioner otherwise qualifies for the practice of law and is admitted to the bar, the state has ample means to discipline him for any future misconduct." The board and the Court appear to be trying to discipline the applicant for something that they perceive might take place in the future. This they cannot do under Schware. It is also stated in Ex Parte Garland, 4 Wall 333, 379, 18 L.Ed. 366, that the practice of law is not a matter of the state's grace.

In the Matter of Hester, 253 Ga. 365, even though the petitioner has stated in his application for reinstatement that he had no assets, and had several large judgments against him, this did not disqualify him from being reinstated to the practice of law. If this Court will just please read the Johnson and Hester cases, applicant feels sure that they will grant his application for certification to take the bar because his case is not as bad as either one of them inasmuch as he was never prosecuted, charged with, nor convicted of a crime involving moral turpitude or felonious conduct or charged with violating a trust, stealing, misappropriation of funds or anything with a rational connection with applicant's fitness or capacity to practice law.

In Re Lubonovic, supra, dealt with a party that had raided the funds held in trust for mortgage companies. There is also not one ounce of evidence in this case that links applicant with this type of immoral breach of fiduciary duty.

There were simply no crimes connected with applicant in connection with his business. Unfair Trade Practices is a civil not a criminal matter and no amount of saying otherwise will make it so.

Justice Frankfurter summed the criteria for good character. "There must be those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility." Schware, Id. The applicant has demonstrated his present moral fitness in each and every one of these categories. His truthfulness has prevailed over a grueling three year examination by the Board and this Court. He has been voted by his fellow students and faculty of his law school to be President of the Student Bar Association and Valedictorian by the faculty. He has been recommended by 36 plus members of the beach and bar in four different states. These people, along with other members of the community, which include his church, pastor, and the charities that he has worked faithfully for, swore under oath, gave affidavits, and letters that show him to be with a high sense of honor and of granite discretion. These judges, lawyers, and laymen would not make this effort on his behalf had he not been of the highest character. His handling of

client funds, both as a real estate broker and a general contractor, where he has successfully maintained his fiduciary duties for nearly 30 years, has never been questioned. He has never been convicted of a felony nor accused of taking money or property of any kind. In short, he has never violated a trust. What else could any court want? This man has done everything that any human being could possibly do to show atonement for his errors. Applicant has faith that when looked at in the light of present behavior, the Court will come to the conclusion that under Schware, Id., he will be certified. It is difficult for applicant to understand how the Court can ignore this man's achievements in the last 6 years. It seems that this Court cannot stop focusing on the past and apply the standard as the United States Supreme Court dictated in Schware, Id., that is present good moral character.

As to the judgments, by the North Carolina and South Carolina attorney generals he has never been given a trial on the merits in either case.

Applicant hired what then appeared to be an outstanding member of the North Carolina State Bar to defend him against the unfair trade practice suit. [A civil suit, not a criminal suit.] As a result of this lawyer's malpractice, the case ended with a default judgment against the applicant and ultimately the attorney ended up in prison for malpractice with multiple felony convictions. How can this Court reason that because of the malpractice of his attorney, that the applicant is "unscrupulous." The unrefuted evidence before the Hearing

Officer, from a well respected North Carolina attorney, shows that the default judgment was solely caused by attorney Jim Blackburn. This is what the North Carolina attorney, who was a live witness, said about these business activities and how the judgments came about.

Mr. Gilbert Chichester, the attorney from North Carolina and Virginia, when asked if he had cause to look into the case of the State of North Carolina, et al. , Lacy H. Tornburg, Attorney General v. Joe Newton, Incorporated and Joe Newton, said:

ON DIRECT

Q. What did you find when you checked this case, as to the records concerning both the trial court and the appellate court?

A. I found that Mr. James Blackburn was a n attorney that was retained to represent Mr. Newton and his company; that at the trial court level that the discovery that was submitted to them by way of interrogatories and requests for admissions were not responded to by the attorney for Mr. Newton, and that consequently, as a result of that, the State of North Carolina was able to obtain a default judgment in the matter; that from looking at the records, just on the face of the records themselves, that the discovery should have been

responded to and could have been responded to; but it was not responded to.

MS. ANDERSON (BOARD ATTORNEY) - CROSS

Q. Okay. Would you agree, Mr. Chichester, that it's not clear from the pleadings in that case whose fault it was that the discovery was not responded to, whether it was Mr. Blackburn or his client's refusal to assist Mr. Blackburn in putting the discovery together?

A. No, I probably wouldn't agree to that, because of what I now know about Mr. Blackburn and his conduct during that period of time; and also because there was no correspondence in the files indicating that Mr. Blackburn was seeking continuances, which you are entitled to under the North Carolina Rules, in order to get this done.

Ms. ANDERSON: Okay. I don't have any further questions. Thank you.

These were the judgments that forced J.W.N. into bankruptcy. 11 U.S.C. 525(a) provides, "a government unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to discriminate with respect to such a grant against (one

who has been) . . . a debtor under this title or a bankrupt or debtor under the Bankruptcy Act...(who...has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act." This court, under 11 U.S.C. 525(a) cannot deny certification to take the Georgia bar due to failure to pay debts discharged by bankruptcy. "The court ordered him to pay civil penalties, canceled all contracts he made with customers since 1981, and ordered him to make restitution." In Re: J.W.N., Id.

A business dispute with Sears in 1984 is used as an example of his unfit character. The record clearly and irrefutably shows that Sears owed him approximately $3,000 then and still owes him the money. Just who is it that the Court has declared unscrupulous. All the applicant did was hold Sears accountable for its just debts. When the name Sears enters this formula, magically, the applicant is deemed to be an unscrupulous businessman just by use of the Sears name. Incredible reasoning! Applicant has labored long and hard, cited North Carolina and South Carolina case law, to show to the Court that unfair business practice charges are civil in nature, not criminal, and the statute can be innocently violated. The statute holds one liable for even the slightest innocent misrepresentation whether knowingly or not. Marshall v. Miller, 302 N.C. 539 and McLeod v. C. & L. Corp., 280 S.C. 519. There never was a trial on the merits involving the applicant. Blackburn just walked off and left the case. The Court has leaped to the conclusion that the applicant's

conduct was knowingly fraudulent or misleading and therefore "evidence of applicant's unscrupulous business practices is pervasive." The evidence is just the opposite. The evidence clearly and irrefutably shows Jim Blackburn's malpractice resulted in these judgments being taken by default. There is absolutely no evidence in the record to refute the applicants version of these facts. The North Carolina and South Carolina assistant attorney generals, Phil Leahman and Ken Moore, respectively, and personnel from the North Carolina Department of Consumer Affairs, Jane Grimes, were on the Board's witness list and were not called as witnesses. They could have been called to refute attorney Gilbert Chichester's testimony but chose not to do so. This evidence overwhelmingly supports the applicant's version of these facts. Mr. Blackburn's felony convictions in the Superior Court of Wake County, North Carolina, the North Carolina State Bar affidavit showing his disbarment, the newspaper articles, testimony of Mr. Chichester, and the applicant himself are all unrefuted as to what the facts were. The Board has not produced one shred of evidence to the contrary yet this court jumps to a totally unfounded conclusion that "evidence of the applicant's unscrupulous business practices is persuasive." How can the Court reach such a conclusion with no evidence produced by the board. The only evidence the board has is what applicant provided.

All these goings on by this attorney resulted in the attorney being charged with nearly a dozen felony counts, pleading guilty, and going to prison. The applicant, along with dozens of other victims, was left with the judgments. This same attorney advised the applicant in his South Carolina business dealings which terminated in bankruptcy court. All this information is well documented in the record with certified court records, newspaper articles, and affidavits from the North Carolina State Bar. The applicant pleads with this Court to examine the testimony of North Carolina attorney Gilbert Chichester before the Hearing Officer. See pages 8 - 17 of the transcript before the Special Master. Obviously the Hearing Officer thought Attorney Chichester, the North Carolina State Bar, and the Wake County, North Carolina district attorney who prosecuted Blackburn, were telling the truth or his decision would have been otherwise.

The Georgia Board never heard Mr. Chichester's testimony. They just jumped to the conclusion that the applicant was an "unfair" businessman and in less than two hours, made a decision, whereas the Special Master took two days to make his decision. How can this Court support a perfunctory and cursory examination like this with no basis in fact. The applicant pleads with this Court to just look at the record. It is all laid out by Attorney Chichester. (NOTE: Attorney Chichester is not applicant's attorney, had never met the

applicant, or even seen the applicant prior to the hearing. The record confirms these assertions. See record of Chichester's testimony before Hearing Officer.)

The board remained focused upon pre-law school behavior, and in light of applicant's rehabilitation, fails to show that their accusations are rationally related to the practice of law. Failing to make this showing is a violation of substantive due process under the Fourteenth Amendment of the United States Constitution, and demands reversal under the Schware standard.

The board failed and refused to consider present, good, moral character, and focused instead upon pre-law school behavior. The board also failed and refused to determine whether applicant has been convicted of any felonies or crimes involving moral turpitude and failed to evaluate any accusations of past bad character in terms of whether such was rationally related to the practice of law. Finally, the board failed to show that applicant had ever violated any fiduciary duty, or trust. In light of this, the board ignored the requirements set out in Schware, Id., and the board's denial of applicant's application to take the bar exam based upon lack of fitness to do so should be reversed.

Respectfully submitted, this 13th day of November, 1995.

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/s/_____
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SUPREME COURT OF GEORGIA

BOARD TO DETERMINE FITNESS OF BAR APPLICANTS

IN RE: Application of	**BAR ADMISSION**
JOSEPH WESLEY NEWTON	**DOCKET NO. 126**

APPLICANT'S OBJECTION TO A PROCEDURE THAT VIOLATES HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS

COMES NOW the applicant, Joseph Wesley Newton, and shows to this Honorable Court the following:

I.

TRIAL PROCEDURE VIOLATES DUE PROCESS OF LAW

The United States Supreme Court in Konigsberg v. State Bar of California, 366 U.S. 36 (1961), held that a state agency charged with adjudging the character and fitness of bar applicants was subject to the Due Process Clause of the Fourteenth Amendment of the United States Constitution. While the case considered the merits of Konigsberg's character application, and therefore the substantive aspect of the Due Process Clause, Mr. Newton focuses in this brief on the procedure requirements of the Due Process Clause. (He intends to file a brief on the substantive Due Process aspect of his application to become a member of the State Bar of Georgia.)

The applicant objects to the procedure announced by the Hearing Officer who granted the Georgia Attorney General the right to present first alleged evidence of bad character. The applicant recognizes that this procedure is standard in Georgia (K Allen and J. Braun, "Admission to the Bar--Character

and Fitness Considerations," Georgia State Bar Journal, Vol. 22, p. 90 (Nov. 1985)), but believes it violates his Due Process rights.

The Supreme Court of Georgia's Rules Governing Admission to the Practice of Law, as approved April 24, 1984, make clear that the result of the Fitness Board's determination not to certify an applicant as fit to practice law is an adjudication that the applicant is of present bad character. See, e.g., Part A, Section 2, "Duties [of the Fitness Board]": "The Board shall inquire into the character and fitness of applicants for admission to the practice of law and recommend to the Board of Bar Examiners only those applicants whom the Board is satisfied possess the integrity and character requisite to be members of the Bar." 252 Ga. A-52. Section 8, "Hearing [by the Fitness Board]": "Prior to finally determining that an applicant shall not be certifed as fit to practice law in this state, the Board shall provide the aplicant with an opportunity to be heard. . . . If the Board finally determines not to certify the applicant as fit to practice law in this state, the Board shall issue a written opinion stating the reasons for its decision. ... Where the Board expressly rejects an applicant's Application for Certification of Fitness to Practice Law, a new application from the rejected applicant shall not be accepted until a period of three years has passed from the date of rejection." 252 Ga. A-54-55.

This is to be distinguished from a determination that an applicant has merely failed to prove by a preponderance of the evidence at a noticed hearing that he is fit to practice law in Georgia. See Konigsberg v. State Bar of California, 366 U.S. 42 (1961)), in which the United States Supreme Court permits a state to deny admission to an applicant whose proffered evidence of good character does not outweigh the Bar's evidence of bad character. Thus an applicant who could theoretically prove by sufficient evidence that he has good character, but simply miscalculates and does not subpoena enough witnesses to the hearing, loses in the balancing process utilized by the hearing officer.

Applicant points out that state action adjudging him as unfit to practice law in Georgia would likely be used against him in any other jurisdiction in which he should seek to practice law. See, 255 Ga. 897. See, also, "Admission to the Bar: A constitutional Analysis." 34 Vanderbilt L. Rev. 655, 668 (1980). This reflects that an adverse determination in Georgia would constitute a substantial penalty that would impeded his "privileges and immunities" (Article 4, United States Constitution) to cross state lines and seek admission in the bar of another state.

The infirmity with the procedure announced is that it does not reflect the burden of persuasion or the burden of production recognized in Georgia for bar applicants. The Supreme Court of Georgia has made it quite clear that the applicant bears both burdens. In re Beasley, 243 Ga. 134, 136 (1979). If he does bear these burdens, then it is not the process to which he is due for the Attorney General to go first with evidence of bad character. As the proponent of his good character, the applicant should go first under traditional common-law notions of procedure.

Applicant suggests that the procedure employed is a reflection of what should be the rule in Georgia, namely, that the Attorney General prove the applicant is not fit to practice law in Georgia beyond a reasonable doubt, and the Attorney General presents his evidence first.

As an applicant who has expended substantial amounts of time, effort, and money to qualify for admission to the Georgia bar, Mr. Newton possesses a liberty interest under the Due Process Clause of the Fourteenth Amendment to practice law in Georgia. Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232, 238-39 (1957). This is not the same as a property interest, which is obtainable when an applicant is admitted to the bar. The state is enjoined not to erect an unreasonable barrier to applicant's liberty interest, but applicant suggest that the state has done so.

II.

PRIOR CONVICTIONS OF CRIME MAY NOT SHIFT APPLICANT'S BURDEN OF PROOF

The Attorney General plans to present evidence that the applicant has been convicted or pled guilty to several misdemeanors which Mr. Newton disclosed on his bar application. The Attorney General is expected to argue that under In re Cason, 249 Ga. 806 (1982), this evidence changes the burden of proof upon applicant from proving that he has good character by a preponderance of the evidence to being rehabilitated from bad character by clear and convincing evidence.

While this argument is sanctioned by In re Cason, applicant respectfully suggests that the procedure is tantamount to burden-shifting, but introduces irrefutable presumptions binding on the fact finder that is impermissible under the Due Process Clause of the Fourteenth Amendment.

One presumption introduced is that prior conviction of a misdemeanor is a mandatory finding of past bad character. A second presumption is that past bad character leads to a mandatory finding of present bad character. This second presumption is nothing more than the doctrine of continuity defined in Sokolic v. State, 228 Ga. 788 (1972), as "a state of things proved to have once existed is presumed to have continued to exist until a change or some adequate cause of change appears." 228 Ga. at 790. Sokolic reverses a criminal conviction for distribution of obscene materials. The state proved that he had been the president of an adult book store in 1969, but the arrest occurred in 1971 and no evidence was proved in 1971 that the defendant still was president. The Supreme Court held that the state could not rely on the doctrine of continuity in criminal cases. "The presumption of continuance as referred to above is not applicable to criminal cases. "The presumption of continuance as

referred to above is not applicable to criminal cases because in them the presumption of innocence is inviolable." 228 Ga. at 790.

While a bar admissions proceeding is not criminal in nature, it is quasi-criminal, as are disbarment proceedings. Strickland v. Willingham, 49 Ga.App. 355, 356 (last complete sentence) (1934); In re Ruffalo, 390 U.S. 544, 551 (1968). These presumptions are irrefutable because otherwise the burden of persuasion would not increase as Cason provides. The Fourteenth Amendment forbids mandatory presumptions that shift the burden of persuasion in criminal cases. Sandstorm v. Montana, 442 U.S. 510 (1979); County Court of Ulster Co. v. Allen, 442 U.S. 140 (1979); Francis v. Franklin, 471 U.S. 307 (1985).

Applicant would point out that while the law does not invest a defendant in a criminal trial with a presumption of good character, Michaelson v. United States, 335 U.S. 469, 475 (1948), it is repugnant to the presumption of innocence to presume a defendant has bad character. Similarly, in a quasi-criminal proceeding that can lead to a holding of bad character, such as bar admissions, an applicant cannot be invested with bad character consistent with Due Process.

Note that the District of Columbia court of appeals recognized the possible unconstitutionality of a rule that would bar all felons from admission to the District of Columbia bar. In re Manville, 538 A.2d 1128 (D.C. App. 1988). The rule in Cason would seem to bar effectively prior misdemeanants from admission to the Georgia bar and thus violates the Fourteenth Amendment.

III.

EQUAL PROTECTION CLAUSE BARS DISCRIMINATION BETWEEN BAR APPLICANTS AND LAWYERS

When the State Bar of Georgia seeks to disbar a licensed attorney, it must prove he violated a standard of conduct beyond a reasonable doubt. Rule 4-

221(e)(2). The result is a determination that the lawyer has bad character and cannot practice his profession. A bar applicant who seeks admission to the Georgia bar must prove he has present good character. However, for the Fitness Board to bar a bar applicant and label him as a person of bad character, the Attorney General Should bear the burden that he has bad character beyond a reasonable doubt. To thus classify persons, one of whom has a liberty interest to gain admission to the Georgia bar, and the other of whom has a similar liberty interest but also a property interest is to discriminate without rational basis between persons and thus the Fitness Board denies to applicant the Equal Protection of the laws under the Fourteenth Amendment of the United States Constitution.

IV.

CONCLUSION

As the Attorney General insists on going first, applicant asks the Hearing Officer to impose a burden on the Attorney General to show applicant is not fit to practice laws in Georgia beyond a reasonable doubt. If the Hearing Officer determines not to break with precedent, then applicant asks him not to rely on an irrefutable presumption of continuity of past bad character by increasing the burden of proof on applicant from a preponderance of the evidence of good character to clear and convincing evidence of rehabilitation from bad character. Although Georgia practice is rooted in decisions of the Georgia Supreme Court, applicant respectfully suggests that they violated the Fourteenth Amendment Due Process and Equal Protection clauses.

Respectfully submitted,

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IN THE SUPREME COURT
STATE OF GEORGIA

In re: Application of JOSEPH WESLEY NEWTON, to the Board To Determine Fitness of Bar Applicants

Bar Admissions
Docket No. 126

(SECOND) MOTION FOR RECONSIDERATION

In the interest of brevity, starting on p. 15 therein:

"When civil penalties were assessed against Applicant, he had no other remedy than bankruptcy. After all, it is no crime to file for bankruptcy inasmuch as it is a perfectly legal tool the state furnishes to an individual when he has made financial mistakes in order to get back on his feet and back into business. These judgments by North Carolina and South Carolina were no dischargeable in bankruptcy. 11 U.S.C. section 362(b) (4) and 11 U.S.C. section 523(a) (7). There was a contract between the State of South Carolina and the Applicant, with the State of North Carolina assenting by its conduct. This is supported in the record. Nowhere in the opinion is it pointed out that Applicant entered into an agreement with North Carolina and South Carolina whereby properties of North Carolina would be sold and all of the profits

applied to the judgment obtained against him. North Carolina and South Carolina entered into an agreement with Applicant whereby he assigned property to them to do just this.

CONCLUSION

As shown above, the Georgia case of I.W.N., infra, conflicts with the mandate of Schware, infra and violates applicant's rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Therefore, this Honorable Court should grant this petition for Writ of Certiorari.

Respectfully submitted, this 4th day of March, 1996.

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